29th Standing Labour Committee And Labour Policy

Part I

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Contents

CORRESPONDENCE

Preface

THE AITUC general council, at its recent meeting on 24 and 25 November 1970 came to the unanimous conclusion that the labour and industrial relations policy of the Government of India is moving in a more reactionary direction.

The National Commission of Labour (NCL) made many recommendations on the vital issues of trade union rights, recognition and the right to strike. These were characterised by the AITUC as anti-working class.

Then the Indian Labour Conference (ILC) wac called by the government to discuss the recommendations. The Hind Mazdoor Sabha (HMS) boycotted it. The AITUC walked out of the meeting having stated its rejection of the recommendations of the NCL.

The AITUC Secretariat, following its policy decisions against the retrograde recommendations of the NCL, had asked the Government of India to call a conference for an overall review of its labour policy and industrial relations in the country. The AITUC wanted such a review as between the government and the representatives of the working-class, sitting face to face on a bipartite level.

Such a bipartite discussion would have enabled the whole trade union movement to give its views not only on the limited question of industrial relations, but also on the role of the trade unions in the solution of problems of the national economy as a whole.

The AITUC is firmly of the opinion that some important sections of monopoly capital, the foreign imperialists and some sections of the uppermost bureaucracy in the state machine are not interested in the growth of the Indian economy, particularly in the vital heavy industry sector. And they do use the industrial relations policy of the Government of India as a weapon to further their ends.

The Government of India, instead of heeding the suggestion of the AITUC, called the usual ritual of the tripartite and prepared for a meeting of the Standing Labour Committee (SLC), and that, too, based on the recommendations of the NCL.

Towards this end, elaborate notes were prepared by the officials of the ministry of labour on these important issues, which in some cases put forward proposals which were more retrograde than those of the NCL.

The AITUC proposed that the SLC be postponed and wrote to Prime Minister Indira Gandhi suggesting that she call a meeting of top representatives of all central trade union organisations to discuss the entire question of labour policy. This was also suggested by the HMS.

However, the government went ahead with the SLC. The AITUC boycotted it. The government claimed that a consensus was reached at the SLC, but the HMS, which did attend the meeting, denounced this as untrue. As is well known, the UTUC is not invited to the SLC.

Thus the consensus is in reality only a consensus between the government, the employers and some leaders of the INTUC.

The united front governments of West Bengal and the first Achutha Menon government of Kerala had proposed legislation providing for ballot as the basis for recognition but the central government has so far not given its consent to these. However, in some states, like Andhra Pradesh and Moharashtra, bills are on the anvil laying down verification as the procedure for determining the representative character of a union.

Now the central government is going ahead on the basis of the SLC "consensus". Hence, a serious situation exists.

The AITUC has already withdrawn from some of the tripartite committees, in protest against the government's continued recalcitrant attitude.

We are publishing in this booklet some of the papers relating to the agenda of the 29th session of the SLC held in New Delhi on 23 and 24 July 1970, the main conclusions of the SLC, and correspondence relating to tripartites, so that all our unions and leaders as well as all others interested in this vital matter know about these developments.

Memoranda prepared by the Ministry of Labour and Employment on some items on the agenda.

Item No. 2:

INDUSTRIAL RELATIONS COMMISSION AND LABOUR COURTS

1—BACKGROUND

The first enactment in India to provide for state intervention in the settlement of industrial disputes was the Trade Disputes Act, 1929. This Act empowered government to intervene in labour disputes, whenever it considered fit. The Act which was subsequently amended in 1938 could not, however, be used extensively in view of Government's **laissez faire** policy and selective intervention at the most. In so far as the then provincial legislation was concerned, a more purposeful intervention in industrial disputes was attempted through the Bombay Trade Disputes (Conciliation) Act, 1934 which introduced, for the first time, a standing machinery to enable the state to promote industrial peace. The scope of this Act was limited to some selected industries. The subsequent Bombay Industrial Disputes Act, 1938, provided for the setting up of industrial courts and prohibition of strike/lock out under certain conditions, etc. This Act was later replaced by a comprehensive Bombay Industrial Relations Act, 1946, with the basic structure of the BID Act unchanged. Shortly thereafter, the Government of India promulgated the Defence of India Rules to meet the exigencies created by the second world war; Rule 81A empowered the appropriate governments to intervene in industrial disputes, appoint industrial tribunals and enforce the award of tribunals on both sides.

2. The main instrument for government's intervention in labour disputes, subsequent to the emergency war legislation (Rule 81A of the Defence of India Rules), has been the Industrial Disputes Act, 1947, which replaced the Trade Disputes Act, 1929. The Industrial Disputes Act provides, at present, for settlement of industrial disputes through conciliation, arbitration and adjudication. Adjudication is thus the ultimate legal remedy for the settlement of an unresolved dispute. For this purpose, the appropriate Government is empowered to constitute

a labour court (Section 7) industrial tribunal (Section 7A) or national tribunal (Section 7B) to adjudicate in disputes of various categories and dimensions.

1.3 The National Commission on Labour has studied extensively the functioning of the present industrial relations machinery for the settlement of industrial disputes. According to the Commission, both employers and workers expressed dissatisfaction over certain specific aspects of the functioning of the conciliation machinery, such as the delays involved, the casual attitude of one or the other party to the procedure, and lack of adequate background in the conciliation officer himself for understanding major issues. While it has listed some suggestions it received for improving the effectiveness of conciliation officers, the Commission seems to favour a more basic rearrangement of conciliation work so as to bring about a qualitative change in the set-up. It has accordingly recommended that the conciliation machinery should be part of an independent organisation like the Industrial Relations Commission suggested by it. (paras 23.17 and 23.22).

1.4 On voluntary arbitration, the Commission has come to the conclusion that it has little success. The primary reason is that there has been little progress in collective bargaining which presupposes the existence of a recognised union representing all the employees and a responsive employer. In the Commission's view, with the growth of collective bargaining and the general acceptance of recognition of representative unions and improved management attitudes, the ground will be cleared, at least to some extent for wider acceptance of voluntary arbitration (para 23.26).

1.5 Coming to adjudication, the Commission has stated that the evidence, collected by it, appears to favour the increasing adoption of collective bargaining to settle disputes, and a gradual replacement of adjudication. On the analysis of the views expressed by various parties, for and against adjudication, the Commission has concluded that the requirements of national policy make it imperative that the state regulation will have to coexist with collective bargaining. But a beginning, for a change in emphasis, has to be made by declaring that collective bargaining will acquire primacy in the procedure for settling industrial disputes. (Para 23.36).

1.6 The Commission has come to the conclusion that there are, at present, certain weaknesses in the existing system for the settlement of industrial disputes. These, in the main, according to the Commission, are: (a) the delays involved in the settlement of disputes, (b) the huge expenditure incurred for resolving a dispute, (c) the largely ad hoc nature of the existing machinery, (d) the discretion vested in the government for reference of a dispute, and (e) allegations of political pressures and interference. (para 23.61). To remove these weaknesses, the Commission has suggested that a permanent machinery, entirely independent

of the administration, should be set up. This machinery, to be known as the Industrial Relations Commission (IRC) should, according to the National Commission, be set up at the centre as well as in the states with the main functions of (i) conciliation, (ii) adjudication in industrial disputes, and (iii) certification of unions as representative unions. The IRC is to have judicial and other persons, eminent in industry, labour or management. In addition to the IRCs the National Commission has also suggested the constitution of Standing Labour Courts which will be entrusted with the judicial functions of interpretation and enforcement of labour laws, awards and agreements.

1.7 The dispute settlement machinery suggested by the National Commission thus comprises two sets of forums, with clearly demarcated functions, one dealing with the so-called 'interest' disputes and the other with 'rights' disputes. The new procedure for the settlement of disputes suggested by the Commission envisages classification of industries into essential and non-essential; for the first category has been made for compulsory adjudication with no right to strike/lockout and for the second category, adjudication is to be made available only after a period of 30 days' strike or lockout. In the proposed set-up, government would have no power to refer disputes to IRC; it may, in certain cases, move the Commission to call for termination of a strike/lockout on the ground that its continuance may affect the national economy or public order but the IRC will have the sole right to accept or reject such a request.

1.8 The recommendations of the Commission regarding the constitution of the IRCs were discussed at the 20th session of the Labour Ministers' Conference (5 November 1969) and the 26th session of the Indian Labour Conference, (12-13 November 1969). At the Labour Ministers' Conference, almost every representative felt that it was not desirable to entrust the functions of conciliation and adjudication to the proposed IRCs. The representatives of state governments were strongly in favour of retention of the power of conciliation with the state labour departments. They also felt that, shorn of the power of conciliation, the proposed IRC would be almost reduced to the level of the existing industrial tribunals. They urged that overriding powers to refer cases to adjudication should continue with the appropriate governments, though they had no objection if the representative unions or the employers had also direct access, to whatever authority was designated for the purpose, to demand adjudication after conciliation had failed. At the Indian Labour Conference also the representatives of the state governments reiterated these views.

1.9 The representatives of the INTUC and the employers' organisations, were, however, in favour of the proposed IRC combining all the functions recommended by the National Commission, including that of conciliation. They pointed out that the IRCs would be competent to handle the functions of conciliation, if necessary, with the help of the

existing experienced officers of the conciliation machinery; the conciliating wing of the IRCs would be altogether separate from the adjudication wing.

1.10 The HMS, which did not participate in the Indian Labour Conference, had also suggested to the Commission substitution of the existing law of industrial disputes by the law of industrial relations to be administrated by a permanent Industrial Relations Board acting through its own agencies and officers. According to the HMS "industrial relations so far have been determined overwhelmingly by the policy and actions of the government, central or state, coloured by their assessment of the disputes and of the trade unions sponsoring these disputes the assumptions behind such approach to industrial relations, have been partisan and fraternalistic." In its comments sent later, the HMS has supported the idea of having IRCs but with functions limited to certification of majority unions as representative unions; the HMS would not like the Commission to perform functions of adjudication.

1.11 At a meeting of the Consultative Committee of Parliament for the Department of Labour and Employment (17 December 1969), Banka Behary Das, MP (PSP) expressed the view that the IRCs as suggested by the National Commission, were necessary so that changes in government, which were becoming frequent, might not affect the handling of industrial disputes.

II—Recommendations of the Commission—a Review

2.1 The relevant recommendations of the Commission concerning the constitution, functions, procedures for settlement of disputes, etc. of the Industrial Relations Commissions and the standing labour courts are listed in Appendix-I. These are examined in succeeding paragraphs.

A—INDUSTRIAL RELATIONS COMMISSION

(1) Set-up of the machinery and its functions

2.2 As stated in para 1.6 above, the Commission has recommended the setting up of permanent Industrial Relations Commissions, both at the centre and in the states, in place of the present arrangement on the premise that the latter suffers from certain weaknesses. (Recommendation Nos. 175-177). While suggesting the change, the Commission has also stated: "We consider that it would not be enough to secure some of these improvements through suitable modifications in the existing machinery. A more basic change is called for, and this can be ensured only through the replacement of the present ad hoc machinery, by a permanent machinery, which will be entirely independent of the administration." (Para 23.61)

2.3 The Commission's analysis leading to the above statement of the weaknesses of the existing machinery does not, however, seem to suggest that these weaknesses were such as could not be rectified without bringing about change(s) in the basic structure of the machinery. It may, therefore, be worthwhile to examine the main arguments advanced by the Commission in support of the proposed IRCs. These are discussed below:

(i) **Delays involved in the settlement of disputes**

2.4 In the existing set-up, delays can occur at three stages, viz., conciliation, consideration of the failure reports by government, and adjudication by the Tribunals, etc. It has been stated by the Commission that 'the performance of the conciliation machinery, as indicated by statistics, does not appear to be unsatisfactory' (para 23.16) and that the evidence shows that 'delays occur in conciliation often for reasons which are beyond the control of the officer'. (Para 23.18). It has been further stated that 'while on the basis of the statistical information we have, it is difficult to establish the extent of such delays, it should be unfair to criticise the machinery on this account.' (para 23.18). It would thus be seen that the Commission has found no basic fault with the existing conciliation machinery. A recent study undertaken by the Indian Institute of Labour Studies brings out that during the period 1965-68, 63.9% of the disputes in the central sphere were disposed of by the conciliation machinery within one month, 25.2% within 2 months, 8.6% within 2-4 months, 2.0% within 4 to 6 months, 0.3% within 6 months and one year and it was only a negligible proportion—4 cases in four years—which took more than one year for disposal. These statistics show that nearly 90% of the cases were disposed of by the conciliation machinery within 2 months. This is certainly a good record.

2.5 The functioning of the conciliation machinery having not been found unsatisfactory by the Commission, the main factor that appears to have weighed with it (the Commission) in suggesting the transfer of the functions of conciliation to the proposed IRCs is to free the machinery from outside influence. The Commission feels that the independent character of the machinery will alone inspire greater confidence and will be able to evoke more cooperation from the parties. (para 23.22). The Commission has however laid stress on the need for freeing the conciliation machinery from outside influence despite its own categorical finding that "such influence have not been proved before us". (para 23.22). Nor had the Commission any direct evidence of the adverse effect of this factor on the officers' efficiency. Another point made by the Commission is about casualness on the part of the parties to the conciliation process. A certain measure of informality and flexibility is inherent in the conciliation effort and also essential. It is not certain that merely by vesting

the functions of conciliation with the IRCs there would be a radical change in the attitudes of the parties.

2.6 Nonetheless, the Commission thought it prudent to recognise opinion evidence in this regard and give satisfaction to parties on these points'. (para 23.21). It would thus appear that the suggestion for handing over the functions of conciliation to the proposed IRCs is not based on entirely objective considerations. There is almost unanimity among the State Governments that these functions should continue to vest in the Government. The real remedy would seem to lie in strengthening the existing set up, rather then supplanting it, by taking, what the Commission calls 'certain other measures', viz. (i) proper selection of personnel, (ii) adequate pre-job training, and (iii) periodic in-service training through refresher courses, seminars and conferences. Apart from this, as suggested by the Commission, it has to be ensured that the conciliation machinery is adequately staffed and the workload on the officers is not unduly excessive. Another provision that needs to be made in law is that the right to formal conciliation would be available only to an accredited* recognised union in respect of matters falling within their purview.

2.7 As regards delays in the consideration of failure of conciliation reports by governments, the Commission has not directly touched on this aspect. Only allegations of procedural delays in adjudications have been referred to. The study, referred to earlier, carried out by the Indian Institute of Labour Studies shows again, however, that during the period 1965-68, 13.0% of the cases in the central sphere were disposed of by the Department of Labour and Employment within one month, 36.5% within 1 to 2 months, 19.4% within 2-3 months, 10.5% within 3-4 months, 8.1% within 4-5 months, 4.6% within 5-6 months, 7.7% within 6-12 months and only 0.2% cases took more than a year to be disposed of. These figures do not lend support to apprehensions of delay at the level at least of the central government, while taking decisions on the failure reports. In case, however, the same standards have not been achieved in the States, efforts can be made to streamline the administration.

2.8 Most of the delays attributed to the tribunals, on the other hand, occur due to reasons usually beyond the control of the presiding officers. The parties are known to have legalistic attitudes. From an analysis of the awards given by the central government tribunals during 1967 and 1968 it appears that the awards were given within three months in 4.0% cases, within 3-6 months in 14.0% cases, within 6-9 months in 15.0%

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* In the paper on recognition of unions, a suggestion has been made that registered unions, on fulfilling certain conditions, may be accredited as Approved Unions with some rights.

cases, within 9-12 months in 10.6% cases, within 12 to 18 months in 11.7% cases, within 18 to 24 months in 10.3% cases, and in 34.4% cases the time taken was more than 2 years. Though the picture given above is not very satisfactory, ways and means can and should be devised to avoid the delays in making an arrangement for the assessment of the workloads of the tribunals and, wherever necessary, for increasing their number. But the parties' bias for legalism, and the delays it causes in proceedings which are judicial or quasi-judicial in nature, is scarcely likely to be reduced—if anything it is likely to be increased—by entrusting adjudication functions to a more or less completely judicial machinery as would seem to be the character of the IRCs recommended by the National Labour Commission. The Commission has not established that the new set-up suggested by it will be less dilatory. The chances are that being more or less a judicial machinery, it would be rigid and inflexible in its approach. Besides, by the very nature of the composition of the IRCs which would have more than one member, there is likely to be more time taken in hearing the parties than happens at present when a tribunal consists of only one person.

(ii) **Ad hoc nature of the Tribunals**

2.9 The argument that the existing machinery of adjudication is ad hoc does not also seem tenable. The industrial tribunals are not ad hoc and each has a specific term. It is only a national tribunal which can be considered ad hoc. But it is set up to deal with specific disputes. By its very nature such a tribunal cannot be created on a standing basis irrespective of the workload. It can be appointed only when an important dispute concerning more than one State arises. It is also always more convenient to appoint such a tribunal at a place near the place of the dispute than at any central place in advance, far removed from the scene. A national tribunal, appointed on a permanent basis, may often have little to do.

2.10 The tribunals which have been dealing with industrial disputes have, over the years, attained a measure of expertise. It cannot be said that the cause of settlement of disputes, by recourse of tribunals, has suffered in any way because of the existng nature of the machinery. If the intention, on the other hand, is merely to make the recruitment of personnel for manning tribunals on a different pattern, this could be considered on merits even in the context of the existing set-up. It should be possible to appoint tribunals of a longer duration by selecting younger persons from the judiciary.

(iii) **Present set-up more expensive**

2.11 The Commission has given no data or details in support of the conclusion that the existing set-up is more expensive than the set-up it

has proposed is likely to be. The indications are that the new set-up may actually be more expensive if each state government, as well as the centre is to appoint an IRC with seven or even five members along with the necessary staff for the purpose. The Government of Mysore have stated that the total expenditure towards the pay of five members of the IRC would be of the order of Rs. 2,10,000 as against the present pay and allowance of Rs. 38,400 of the two Presiding Officers in that State. Moreover, there is likely to be enormous expenditure on TA and DA of the members as the headquarters of the IRC would normally have to be located at the State capitals. It would thus appear that most of the state governments, which opposed the proposed IRC even on principle at the Labour Ministers' and the Indian Labour Conferences (November 1969) may reject it also for reasons of economy. Similarly, at the Centre, it is evident that a seven-member National IRC all at one place would be definitely more expensive than the present arrangement under which seven one-member tribunals function at as many different areas to adjudicate in industrial disputes.

(iv) **Discretion vested in the Government in the matter of reference of dispute**

2.12 An important argument in favour of the discretion for references being vested in the appropriate governments is that government has the responsibility to maintain industiral peace in the industry; it is also answerable to parliament/state legislatures. But at the Labour Ministers' Conference and the Indian Labour Conference (November 1969) the representatives of the state governments were emphatic that law and order being their responsibility, they could not afford to be mere spectators and go before the IRCs as petitioners. In view of the opposition by the state governments it is clear that the idea of an IRC has no chance of being accepted by them. The reasons cited by the states for rejecting the proposal of IRCs would equally hold good in the central sphere as well.

(v) **Exercise of political pressures and interference**

2.13 The Commission has itself stated that 'allegations of political pressures, though often without foundations, have been there'. It has been further stated that 'Discretion, though used by the appropriate government in a fair manner, may appear to the workers/employers affected to have been unfairly used'. (para 23.36). It is not clear why the Commission has favoured replacement of the existing system on the basis of such inconclusive evidence. Another point, which deserves mention is that there is no guarantee that there would not be complaints of partiality in the functioning of the IRCs. With the non-judicial members being on the IRCs, the possibility of these members being swayed by their own inclinations cannot be entirely ruled out. Even if they maintain a detached

view, it is likely that an aggrieved party, of a particular persuasion, may still accuse them of showing favour or partiality in coming to a particular decision. In fact, the AITUC, which has in the past been very vocal with its allegations of partiality against government in cases of disputes raised by the INTUC-unions, has expressed similar apprehensions* about the new set-up it has stated: "A judge (as in the existing set-up) is at least not part of the inter-union rivalry."

2.14 It would be seen from the foregoing analysis that the very basis on which the Commission has recommended a change may not stand close scrutiny. There does not, therefore, appear to be any need to appoint a high-powered body like the IRC to deal with conciliation and adjudication. In a separate paper on Recognition of Unions it has been suggested that there is no need to appoint an independent body simply for the certification of unions for purpose of recognition; the task could as wellbe assigned to the existing tribunals/courts. The recommendations of the Commission (Recommendations Nos. 175 to 181) may not, therefore, necessarily be accepted as they stand. There would then be no question also of the IRC providing arbitrators from amongst its members/officers, as suggested in the Commission's recommendation No. 182. If arbitration has not made the headway it should, as pointed out by the Commission also, it is because the arbitration procedure itself has yet to gain wider acceptance among parties to industrial disputes, this is not something that can be attained simply by designating a particular source from which to draw the arbitrators.

2.15 The real remedy, from every point of view, would appear to lie in steps for improving the functioning of the existing machinery. The lines of such improvement can be worked out in fuller details. It may suffice to mention at this stage, that besides the measures already indicated for improving the functioning of the Conciliation Machinery, the following other steps could be taken:

(i) Delays in the adjudication and settlement of disputes can be reduced by regularly assessing the workload of the industrial tribunals and appointing more of them, where necessary, to cope with the work more expeditiously.

(ii) Either of the parties (i.e. management and the recognised union), in common with the appropriate Government, may be given the right of access to a tribunal, on the failure of conciliation, even though such direct access to a tribunal may operate as a disincentive to serious collective bargaining.

(iii) The tribunals may be placed on a more long-term and steady footing by increasing their tenures and by appointing younger

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* Page 14 of the AITUC's publication: Comments of Labour Commission Report.

persons from the regular judiciary, and by adopting the same procedures for the selection of Presiding Officers as recommended by the National Commission for judicial members of the proposed IRCs. (Recommendation No. 179).

(2) PROCEDURE FOR SETTLEMENT OF DISPUTES BY THE IRCs.

3.1 The Commission has laid down the detailed procedure to be followed by the IRCs for the settlement of disputes. Although the proposition for setting up the IRCs does not, on a balance of considerations, appear to be very sound, it may still be worthwhile examining the feasibility of the procedure suggested. The Commission has recommended that "In essential industries/services, when collective bargaining fails and when the parties to the dispute do not agree to arbitration, either party shall notify the IRC with a copy to the appropriate government, of the failure of negotiations whereupon the IRC shall adjudicate upon the dispute and its award shall be final and binding upon the parties." (Recommendation No. 184). The constitutional right of an appeal to the Supreme Court would, of course, always be there. It may be pointed out in this connection that Section 2(n) of the Industrial Disputes Act already defines what would constitute 'public utility services'. The Conciliation Machinery is obliged under Section 12 of the Industrial Disputes Act to intervene in disputes in public utility services where these are backed by a notice of strike/lockout. It is further laid down in the Act that when a dispute relates to a public utility service and the notice of strike/lockout has been given under Section 22, the appropriate government shall, unless it considers that the notice has been frivolously or vexatiously given or that it would be inexpedient so to do, make a reference for adjudication. It would thus be seen that even under the existing statutory provisions, all disputes in public utility services are to be referred to adjudication with the obvious exception just referred to. There appears to be no particular need, even from the point of view of the procedure involved, to make a change in the existing provisions. The question as to which industries/services should be declared essential is proposed to be dealt with in a separate paper.

3.2 In the case of non-essential industries/services, the Commission has suggested:

"Following the failure of negotiations and refusal by the parties to avail of voluntary arbitration, the IRC after receipt of notice of direct action (but during the notice period) may offer to the parties its good offices for settlement. After the expiry of the notice period, if no settlement is reached, the parties will be free to resort to direct action. If direct action continues for 30 days, it will be incumbent on the IRC to intervene and arrange for settlement of the dispute." (Recommendation No. 185).

3.3 The Commission appears to have made the above recommendation for a 30-day period of enforced direct action, as it were, (covering thereunder a strike or lock-out) with the object of promoting collective bargaining. Sarvashri S. R. Vasavada, G. Ramanujam, R. K. Malaviya and Ramananda Das, in their Minute of Dissent, objected to this recommendation. The following comments of the Council of Indian Employers also deserve mention:

"The provision permitting the continuance of a strike/lockout for 30 days in the case of non-essential industries is apparently intended to encourage collective bargaining. If collective bargaining has to be encouraged, then a beginning must be made with restricting the intervention of government in industrial relations. The Council, at the same time, appreciates the argument advanced by many State Governments that they should have a power to prohibit a particular strike/lockout to refer the dispute to adjudication whenever they consider it necessary in the interest of public order, safety and health. In order to meet this legitimate demand, the Council is inclined to agree that the appropriate government may be empowered, even under the new scheme, to prohibit continuance of a particular strike/lockout and to refer the dispute to adjudication by IRC, if it is found to affect public order, safety and health".

3.4 The Commission's recommendation, if accepted as it stands, would only amount to forcing the workers to go on strike even if they do not want to do so, merely for securing adjudication of a dispute. Whether such a provision will necessarily induce the parties to prefer mutual settlements seems problematical. The consensus at the Labour Ministers' Conference and the Indian Labour Conference (November 1969) was wholly against this recommendation. It would, therefore, be only appropriate if the procedure outlined in the recommendation is not accepted.

3.5 The appropriate governments are, at present, empowered to prohibit strikes and lock-outs after referring a case to adjudication. The Commission, in its recommendation No. 186, has suggested that this power should rest with the proposed IRCs. In view of the different suggestions already made above, however, the existing practice may well continue.

3.6 It has been suggested by the National Commission that (a) the IRC will have powers to decide to pay or withhold payments for the strike/lockout period, under certain circumstances, and (b) if during the pendency of the strike or thereafter, the employer dismisses or discharges an employee because he has taken part in such strike, it would amount to unfair labour practice, and on proof of such practice, the employee will be entitled to reinstatement with back wages (Recommendation No. 188). The Industrial Tribunals are already covering in the awards the issues co-

vered by the first part of of the recommendation. As for the second part the matter may be considered while listing unfair practices to be incorporated in law.

3.7 The National Commission has also recommended that an award made by the IRC in respect of a dispute raised by a recognised union should be binding on all workers in the establishment(s) and the employer/s). (Recommendation No. 190). Under the existing provisions of the ID Act, an adjudication award is binding only on the parties to a dispute. To enable unions to play their role effectively in the promotion of collective bargaining, it will be only appropriate if the awards in respect of disputes raised by recognised unions are made binding on all the workers in an establishment. The Commission's recommendation in this respect deserves to be accepted.

B—LABOUR COURTS

4.1 As a complement to the IRCs, the new set-up, according to the National Commission, should comprise standing labour courts in each state, the strength and locating of such courts being decided by the appropriate government. It has also been suggested that members of the labour courts should be appointed by the government on the recommendations of the high court, generally the government should be able to choose from a panel given by the high court in the order recommended by the latter, (Recommendation No. 191). The labour courts, according to the Commission, should deal with disputes relating to:

i) rights and obligations;
ii) interpretation and implementation of awards;
iii) claims arising out of right and obligations under the relevant pro visions of law or agreements;
iv) unfair labour practices and the like.

Proceedings instituted by the parties asking for the enforcement of rights falling under the aforesaid categories should be entertained by the labour court which should be given appropriate powers to execute such claims. (Recommendation No. 192).

4.2 Section 7(1) of the existing ID Act already lays down that the appropriate government may constitute one or more labour courts for the adjudication of industrial disputes relating to any matter specified in the Second Schedule (Appendix-II) to the act and performing such other functions as may be assigned to them under the act. A labour court consists of one person only, to be appointed by the appropriate government. At present, the central government has seven standing labour courts, whose presiding officers are also the presiding officers of the central government industrial tribunals. In addition, the central government, at times, refers certain cases to the state labour courts also, keeping in view the convenience of the parties to the dispute.

4.3 It would be observed that the labour courts suggested by the Commission are to be somewhat different from the existing courts inasmuch as the new labour courts are expected to handle, besides cases pertaining to the matters listed in Appendix-II, certain other matters also mentioned in paragraph 4.1. In the Paper on Recognition of Unions, it has been suggested that the task of ordering verification for recognition of unions may be entrusted to the labour courts. Besides, complaints pertaining to unfair practices have to be dealt with by the labour courts, as these have a bearing on recognition. In terms of Recommendation No. 134, a labour court may also step in, at the request of either group in a union or on a motion by the appropriate government, in cases where a central organisation is unable to resolve an intra-union dispute. As the labour courts would have to cover a much larger field, the suggestion of the Commission for appointing standing labour courts merits consideration. A labour court may also have to be empowered to impose penalties for contravention of the laws it would administer. It would seem desirable to provide also that any party—the management or an accreddited/recognised union as well as the appropriate governments—may approach a labour court in appropriate cases for a decision.

4.4 The National Commission has recommended that appeals over the decisions of a labour court in certain clearly defined matters may lie with the high court within whose jurisdiction/area the court is located. (Recommendation No. 193). The Commission has not spelt out the cases in which appeals could be filed against the decisions of a labour court. This matter will have to be considered in consultation with the state governments. The Labour Ministers of Assam and Maharashtra, at the last Labour Ministers' Conference (November 1969), did not favour any provision for appeal against a labour court's decision. But some provision for appellate jurisdiction may be necessary with the enlarged powers of the labour courts.

III—CONCLUSIONS

5 On the basis of the foregoing, the following points are suggested for consideration:

(i) There appears to be no special need to appoint a high-powered body, like the Industrial Relations Commission, to deal with the functions of conciliation and adjudication, which may remain with government, as at present, the function of certification of unions, as suggested in the paper on recognition of unions, need not also be entrusted to any special body like the IRC.

(ii) Instead, the existing conciliation and adjudication machinery may as well be suitably strengthened on the basis of regular assessment of workload, as outlined in paras 2.6 and 2.15 respectively. Appropriate procedures for recruiting personnel to man these organisations, as recom-

mended by the Commission, can be adopted even in respect of the existing machinery.

(iii) Provision may be made that right to conciliation/adjudication would be available only to accredited/recognised unions, in respect of matters within their purview.

(iv) The procedure suggested by the National Commission for settlement of disputes in respect of essential industries is already covered substantially by the existing provisions in the Industrial Disputes Act in regard to public utility services. The same procedure may be followed in regard to essential industries.

(v) The procedure suggested by the National Commission in regard to settlement of disputes in non-essential/industries/services e.g. 30 days' direct action after failure of conciliation, etc., may not be accepted.

(vi) The power to prohibit strike/lockout should vest with the appropriate government, as at present.

(vii) The appropriate government, in common with the parties, (i.e. the management and the accrediated/recognised union(s); should have the right to take up a dispute to a labour court or industrial tribunal, as the case may be.

(viii) The second part of the recommendation No. 188 regarding an employer's action in dismissing or discharging an employee during the pendency of strike or thereafter, may be considered while listing unfair labour practices, as suggested in para 3.6.

(ix) Provision may be made that an award by an industrial tribunal in a dispute raised by a recognised union would be binding on the management and all the workers of an establishment or industry, as the case may be.

(x) Labour courts may be appointed in each state to deal with matters relating to rights and obligations, interpretation and implementation of awards, claims arising out of rights and obligations under the relevant provisions of laws and agreements, unfair labour practices, verification and accreditation/recognition of unions, cases of dismissal and discharge of workers and intraunion rivalry, as listed in Appendix—III.

(xi) The labour courts may be given appropriate powers to execute claims and impose penalties.

(xii) Either party (the management and accredited/recognised union), in common with the appropriate government, may be given the right to approach a labour court for its decision.

(xiii) It is to be considered whether a provision may be made for an appeal over the decision of a labour court, in certain specified matters.

Recommendations of the National Commission on Labour

A—INDUSTRIAL RELATIONS COMMISSION

175. The present arrangement for appointing ad hoc industrial tribunals should be discontinued. An Industrial Relations Commission (IRC) on a permanent basis should be set up at the Centre and one in each State for settling 'interest' disputes. The Industrial Relations Commission will be an authority independent of the executive.

176. The National Industrial Relations Commission should be appointed by the central government for industries for which that government is the appropriate authority. The National Industrial Relations Commission would deal with such disputes which involve questions of national importance or which are likely to affect or interest establishments situated in more than one state. Its scope should be broadly the same as that of national tribunals under the nIdustrial Disputes Act, 1947.

177. Each state should have an Industrial Relations Commission for settlement of disputes for which the state government is the appropriate authority.

178. The main functions of the National/State Industrial Relations Commissions will be (a) adjudication in industrial disputes, (b) conciliation and (c) certification of unions as representative unions.

179. The Commission should be constituted with a person having prescribed judicial qualifications and experience as its president and an equal number of judicial and non-judicial members; the non-judicial members need not have qualifications to hold judicial posts, but should be otherwise eminent in the field of industry, labour or management. Judicial members of the National Industrial Relations Commission, including its President, should be appointed from among persons who are eligible for appointment as judges of a high court.

180. The conciliation wing of the Commission will consist of conciliation officers with the prescribed qualifications and status. There will be persons with or without judicial qualifications in the cadre of conciliators. Those who have judicial qualifications would be eligible for appointment as judicial members of the Commission after they acquire the necessary experience and expertise. Others could aspire for membership in the non-judicial wing.

181. The functions relating to certification of unions will vest with a separate wing of the National/State Industrial Relations Commission.

182. The Commission may provide arbitrators from amongst its members/officers in case parties agree to avail of such services. The Commission may permit its members to serve as Chairman of Central/State Wage Boards/Committees, if chosen by the appropriate Government for such appointment.

183. After negotiations have failed and before notice of strike/lock-out is served, the parties may agree to voluntary arbitration and the Commission will help the parties in choosing a mutually acceptable arbitrator. Alternatively, either party may, during the period covered by the said notice, approach the Commission for naming a conciliator within the Commission to help them in arriving at a settlement.

184. In essential industries/services, when collective bargaining fails and when the parties to dispute do not agree to arbitration, either party shall notify the Industrial Relations Commission with a copy to the appropriate government, of the failure of negotiations whereupon the Industrial Relations Commission shall adjudicate upon the dispute and its award shall be final and binding upon the parties.

185.* In the case of non-essential industries/services following the failure of negotiations and refusal by the parties to avail of voluntary arbitration, the Industrial Relations Commission after the receipt of notice of direct action (but during the notice period) may offer to the parties its good offices for settlement. After the expiry of the notice period, if no settlement is reached, the parties will be free to resort to direct action. If direct action continues for 30 days it will be incumbent on the Industrial Relations Commission to intervene and arrange for settlement of the dispute.

186.* When a strike or lock-out commences, the appropriate government may move the Commission to call for the termination of the strike/lock-out on the ground that its continuance may affect the security of the state, national economy or public order and if after hearing the government and the parties concerned the commission is so satisfied, if may, for reasons to be recorded, call on the parties to terminate the strike/lock-out and file their statements before it. Thereupon, the Commission shall adjudicate on the dispute.

187. It should be possible to arrange transfer of cases from the National Industrial Relations Commission to the State Industrial Relations Commission and vice versa under certain conditions.

188. (a) The Commission will have powers to decide to pay or withhold payments for the strike/lock-out period under certain circumstances.

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* Subject to minute of dissent by four worker members. Their main recommendations are enclosed.

(b) If during the pendency of the strike or thereafter, the employer dismisses or discharges an employee because he has taken part in such strike, it would amount to unfair labour practice, and on proof of such practice, the employee will be entitled to reinstatement with back wages.

189. All collective agreements should be registered with the Industrial Relations Commission.

190. An award made by the Industrial Relations Commission in respect of a dispute raised by the recognised union should be binding on all workers in the establishment(s) and the employer(s).

B—Labour Courts.

191. (a) Standing Labour Courts should be constituted in each State. The strength and location of such courts will be decided by the appropriate government. (b) Members of the Labour Court will be appointed by government on the recommendations of the high court. Generally, the government should be able to choose from a panel given by the high court in the order in which the names are recommended.

192. (a) Labour courts will deal with disputes relating to rights and obligations, interpretation and implementation of awards and claims arising out of rights and obligations under the relevant provisions of law or agreements as well as disputes in regard to unfair labour practices and the like. (b) Labour courts will thus be the courts where all disputes specified above will be tried and their decisions implemented. Proceedings instituted by parties asking for the enforcement of right falling under the aforesaid categories will be entertained in that behalf. Appropriate powers enabling them to execute such claims should be conferred on them.

193. Appeals over the decisions of the labour court in certain clearly defined matters may lie with the high court within whose jurisdiction/area the court is located.

Extract from minute of dissent by S. R. Vasavada, G. Ramanujam, R. K. Malviya and Ramananda Das.

* * *

64. We, therefore, recommend:—

(1) In essential industries and services, following the failure of direct negotiations and non-availability of arbitration, all the points in dispute shall automatically go before the Industrial Relations Commission for adjudication by it.

(2) It is not possible to categorically list out as to what all could be included in essential industries and services. They will keep on changing, and from time to time additions may have to be made. The power to define and name essential industries and services and to add to the list of entries therefrom should rest with the Parliament.

(3) In the other industries and services, following the failure of direct negotiations and non-availability of arbitration, parties—labour and management—must be free either to go on strike or declare a lock-out, as the case may be, or directly invoke, separately or jointly, adjudication by the Industrial Relations Commission. The choice between strike and lock-out on the one hand and adjudication on the other should rest with the parties.

(4) Such direct access to Industrial Relations Commission should be given in the case of workers only to the union recognised as the representative union under the law for which separate recommendations have been made elsewhere.

(5) Where, however, neither party wishes the adjudication machinery and where the appropriate Government is convinced that it is necessary to refer the dispute for adjudication by the Industrial Relations Commission, it shall have the power to direct the Industrial Relations Commission to adjudicate the matters in dispute and at the same time prevent, or prohibit the continuation of the strike or lock-out.

6) The finality of an award by the Industrial Relations Commission should be subject to parliament's right to modify the same in the interests of community.

APPENDIX—II

MATTERS WITHIN THE JURISDICTION OF LABOUR COURTS*

1. The propriety or legality of an order passed by an employer under the standing orders;
2. The application and interpretation of standing orders;
3. Discharge or dismissal of workmen, including reinstatement of, or grant of relief to, workmen wrongfully dismissed;
4. Withdrawal of any customary concession or privilege;
5. Illegality or otherwise of a strike or lock-out; and
6. All matters other than those specified in the Third Schedule.

APPENDIX—III

MATTERS TO BE REFERRED TO LABOUR COURTS

1. Interpretation and implementation of awards and claims arising out of the rights and obligations under the various labour laws, awards and agreements;

* Second schedule to the Industrial Disputes Act, 1947 (See section 7)

2. Disputes relating to unfair labour practices;
3. The propriety or legality of an order passed by an employer under the standing orders; and the application and interpretation of standing orders;
4. Discharge or dismissal of workmen including reinstatement of, or grant of relief to, workmen wrongfully dismissed;
5. withdrawal of any customary concession or privilege;
6. Illegality or otherwise of a strike or lock-out;
7. All other matters involving rights and obligations, other than those falling within the jurisdiction of the Industrial Tribunals;
8. Verification, accreditation and recognition of unions;
9. Matters relating to intra-union rivalry.

Item 3:

RECOGNITION OF UNIONS

I. BACKGROUND

Recognition is a matter of vital importance to trade unions. Industrial democracy implies that the majority union in an establishment or industry should have the right to speak and act for all workers and to enter into agreements with the employer. The first attempt to deal with the problem, in a limited area, was made through the Bombay Industrial Disputes Act, 1938 and its successor, the Bombay Industrial Relations Act, 1946. Subsequently, Government of India also brought in legislation, at one stage, through the Indian Trade Unions (Amendment) Act, 1947; but the Act was not enforced. The Labour Relations Bill framed by the Government of India in 1950 had also sought to provide for the certification of a bargaining agent; such agent, it was envisaged, could either be a representative union or elected representatives of the employees, in case no such union existed. This bill, however, lapsed. Later, certain statutory provisions for recognition were made in State legislations in Gujarat, Madhya Pradesh and Rajasthan. The salient features of the State enactments are given in Appendix-I.

1.2 It was the Code of Discipline which, for the first time, laid down in 1958 the criteria for recognition of unions, on a voluntary basis, for the country as a whole, except that its provisions were not applicable to states which had already statutory provisions in this regard. In Bihar, the Tripartite Central (Standing) Labour Advisory Board has laid down some principles for recognition of unions broadly on the lines of the Code. This voluntary approach to recognition of unions was prompted by the desire to go slow on legislation.

1.3 The National Commission on Labour thus, had, before it, the experience gained in working the recognition procedures both on a statutory and on a voluntary basis. The scheme of recognition suggested by the National Commission envisages compulsory recognition of unions, through a central law, in units having prescribed size of employment or capital investment. It provides that all matters relating to recognition should be dealt with by a broad-based independent body, like the Industrial Relations Commission (IRC), comprising judicial persons as well as others eminent in the field of industry, labour or management. The Commissoin has not, however, made any clear-cut recommendation on the

controversial question of verification procedure vs. secret ballot for determining the relative strength of contending unions and has left the issue to be decided by the proposed IPC on the facts of each individual case. Though this was done to cover opposing points of view, there was still a minute of dissent by some of the worker-members of the Commission. It is the unanimous view of the Commission, however, that the recognised union should be the sole bargaining agent and enjoy certain exclusive rights, with the minority unions having only the right to represent cases of dismissal and discharge of their members before a labour court.

1.4 In the evidence led before the Commission, the representatives of some of the departmental undertakings of government had, indeed, urged that their existing practice of recognising more than one union/federation might be continued. The Commission found no justification for such a departure from the general principle that only one union should be accorded recognition in one undertaking or industry. The Commission has held that the position in the departmental undertakings of government is not so different from that in other undertakings, as to warrant a change in principle in regard to union recognition. (Recommendation No. 209)

1.5 The recommendations of the National Commission were discussed at the 20th Labour Ministers' Conference and the 26th Indian Labour Conference in November 1969. The consensus was in favour of statutory recognition of unions. There was also consensus that only the majority union in an undertaking should be recognised. The general view was that verification of membership should be the method for determining the representative union for purposes of recognition; the Government of West Bengal and the AITUC were, however, in favour of the secret ballot method.

1.6 The Commission's report was discussed also by the Consultative Committee of Parliament for the Department of Labour & Employment at two meetings held in December 1969 and February 1970. Three of the members, belonging to SSP, PSP and Swatantra advocated adoption of the secret ballot method for determining the representative character of unions.

1.7 The various recommendations of the National Commission on the question of trade union recognition are listed in Appendix-II. These are examined in the succeeding paragraphs.

II—MATTERS COVERED BY THE RECOMMENDATIONS OF COMMISSION

(i) Nature and Scope of recognition

2.1 The Commission has recommended.

"It would be desirable to make recognition compulsory under a central law in all undertakings employing 100 or more workers or where the capital invested is above a stipulated size. . ."

(Recommendation No. 171)

2.2 The first part of the recommendation envisages provision for compulsory recognition of unions under a central law. There was a fair measure of support on this point in the evidence that the Commission collected. The consensus at the Labour Minister's Conference and the subsequent Indian Labour Conference, as already stated, was also in favour of statutory recognition of unions. The general view was that one union in an undertaking should be recognised, except that representatives of the Government of J&K and the UTUC preferred recognition to all unions. Having regard to the general consensus, this part of the recommendation deserves to be accepted; while all unions have to be duly registered, recognising every union indiscriminately would, in fact, render the recognition process itself negatory.

2.3 The second part of the recommendation seeks to restrict the proposed central law on recognition to (a) undertakings employing 100 or more workers, and (b) those where the capital invested is above a stipulated size. The Commission has not offered any reasons for making this recommendation. The course suggested, however, is a departure from the existing practice. Both under the code of discipline and the state enactments, the recognition provisions apply to unions in all undertakings irrespective of the size of their employment and capital invested. While the Commission has specifically indicated the size of employment it would like to be taken into account for this purpose, it has not even given any indication of the size of capital investment it had in view. The Commission has not also suggested any alternative arrangement for the recognition of unions in undertakings with lower employment and capital investment. The need for stabilisation of the unions, and promotion of collective bargaining through a recognised union, in such smaller units is no less pressing; the employees of these units are equally covered by the Industrial Disputes Act, the Trade Unions Act and other labour laws. Any scheme for recognition of unions should, therefore, appropriately cover unions in all industrial undertakings, irrespective of their size of employment or capital investment.

(ii) **Procedure for recognition**

3.1 The Commission's recommendation in this regard is as under:

"The proposed National/State Industrial Relations Commission (Recommendations 175-177) will have the power to decide the representative character of a union, either by examination of membership records, or if it considers necessary, by holding an election by secret ballot open to all employees. The Commission will deal with various aspects of union recognition such as (i) determining the level of recognition—whether plant, industry, centre-cum-industry—to decide the majority union, (ii) certifying the majority union as a recognised union for collective bargaining and (iii) generally dealing with other related matters."

(Recommendation No. 172)

3.2 There have been differences on the manner in which the recognition of a union should be determined i.e. whether it should be by (a) verification of the fee-paying membership of unions, or (b) election by secret ballot. The matter has been discussed, more than once, at tripartite forums and in the state and central legislatures. The consensus at the 16th and 17th Sessions of the Indian Labour Conference, which considered the question, was that the procedure for verifying membership on the basis of paid membership was more stable and preferable as it ensured financial viability of a union and enabled it to discharge its responsibilities effectively. The supporters of this procedure contend that ballot would not reflect the true choice of workers, since it was likely to be accompanied by such features as propaganda and whipping up of emotions on religious, caste, parochial or ideological grounds leading to disruption of the smooth running of undertakings. Another problem that ballot poses, it is argued, is as to who should be given the right to vote—whether all the workers or only those who are unionised. In the former case a unionised worker would get equated with a non-member, which would not be conducive to stable membership of unions; in fact it may ultimately weaken the trade union movement. If, on the other hand, only union members are to be given the right to vote, the unions are likely to adopt unfair practices to boost their bogus membership. These views are summed up in the minute of dissent of Sarvashri S. R. Vasavada, G. Ramanujam, R. K. Malviya and Ramananda Das, to the Commission's report. Their contentions, in the main, are as under:

i) the ballot may weaken the trade union movement;

ii) the secret ballot will tend to politicalise the trade union movement completely;

iii) the plant will be surcharged with election atmosphere;

iv) employers and certain political parties with easy money will be able to sway the elections of a representative union;

v) a union recognised by ballot may not feel its responsibility towards its members; and

vi) elections by ballot will also raise other basic problems such as who should be the electorate.

3.3 The supporters of secret ballot base their case primarily on the premise that it is the most democratic way of expressing choice and the basis of representation in industrial democracy need be no different from that of any other institution. In the view of the protagonists of secret ballot, the Indian worker is now grown up enough to know what is good for him and to make a rational choice. (Para 23.53).

3.4 The Commission has examined these divergent views but has made no clear-cut recommendation. It has in effect left the issue unresolved. It would merely leave it, in each given case of recognition, to an independent authority like the Industrial Relations Commission to de-

termine whether the procedure to be followed should be verification or secret ballot.

3.5 At the Labour Ministers' Conference (November 5, 1969) which considered the National Labour Commission's recommendations, the State Governments were almost unanimously in favour of the verification method; only West Bengal among the states and Delhi among the union territories indicated a preference for secret ballot among all the workers. The representative of the Government of Tamil Nadu, however, favoured a via media; he suggested that check-off system might be adopted on the basis of individual consent of workmen thereby establishing universal membership with a right to the worker to opt out of the check-off system at any time. The device, even if otherwise feasible, would not, however, necessarily make for any substantial improvement over the existing system of optional union membership. At the subsequent Indian Labour Conference (November 1969) the general consensus was that verification of membership should be the method for determining the representative character of a union for purposes of recognition. The Government of West Bengal and the All India Trade Union Congress, however, still adhered to their preference for the secret ballot method. At the second meeting of the consultative committee of parliament (December 1969) three of the members belonging to SSP, PSP and Swatantra, also supported the secret ballot method.

3.6 The general consensus thus is clearly in favour of verification of membership; this method may be supported.

(iii) **Agency for certification of unions**

4.1 The Commission has recommended:

"The main functions of the National/State IRCs will be..... (c) certification of unions as representative unions".

(Recommendation No. 178)

4.2 The trend of evidence before the Commission was unmistakably in favour of an independent authority to deal with various matters relating to recognition of unions. According to the Commission, although state governments, public sector employers and some others suggested the continuation of the present arrangements, i.e., verification through government machinery, they did not seem to object to the setting up of an independent agency for this purpose. Several study groups and a number of employers and unions, on the other hand, expressed a strong preference for the setting up of an independent authority to deal with these matters. In the view of the Commission also, only such an independent authority would be able to inspire confidence among the unions/parties and eliminate suspicions of favouritism in this vital matter (Para 23.55). The Commission has elsewhere recommended (Recommendation No. 175) the setting up of an IRC for the adjudication of disputes. In its view this

body should, along with its other functions, also take up the function of certification of unions.

4.3 The four State enactments, which at present provide for recognition of unions, do not envisage constitution of any high-powered machinery, as recommended by the National Commission, to deal with matters of recognition. The machinery of the registrar of trade unions has been utilised, under these enactments, for the verification of membership and recognition of unions. The statistics of cases taken up for recognition of unions in the central sphere, under the code of discipline, do not also justify the need for setting up a separate machinery just for this purpose; in over a decade from 1958 to 1969 the Central I&E Division received only about 200 cases of recognition of unions. Besides, any such separate machinery will have the disadvantage of having no separate field agency of its own for undertaking the verification of unions. If, on the other hand, a separate machinery with its own independent organisation throughout the country were to be set up, it may not have sufficient work to justify its continuance of a permanent basis; it will also be unduly expensive. It would, therefore, seem to be advisable to consider how best to utilise the existing available organisation for this work and at the same time ensure against complaints of possible favouritism. It is suggested that the labour courts, which according to the Commission's recommendation (No. 191) have to be set up for other purposes, may be empowered also to decide the validity of claims of recognition. The labour court, on receipt of such claims, may issue notices to all unions concerned in an establishment or industry to file their statements; after duly examining these statements the court may order verification to be undertaken in accordance with the prescribed rules. On receipt of the result of verification, the Court may declare the majority union as the recognised union for an establishment or industry, as the case may be. The labour court need not then have any independent staff for the verification work; it may as well entrust it to the existing Industrial Relations Machinery/Registrar of Trade Unions, who may do the work under the labour court's orders and report the result to the court for a final decision. Any aggrieved party may have the right to approach the labour court concerned for relief. This procedure will appear to be simpler and less expensive. It will have the advantage of eliminating government influence by conferring the power on a labour court. There does not, therefore, appear to be any need to set up a machinery like the IRC to deal with matters pertaining to recognition.

4.4 The labour court can also deal with the various questions, as suggested by the National Commission in Recommendation No. 172, regarding—

a) the determination of the level of recognition—whether plant, industry, centre-cum-industry—to decide the majority union.

b) the certification of the majority union as the recognised union for collective bargaining, and

c) other related matters.

(iv) **Types of union recognition**

5.1 The relevant recommendations of the Commission in this regard are:

"(a) Formation of craft/occupation unions should be discouraged. Craft unions operating in a unit/industry should amalgamate into an industrial union.

(b) Where there is already a recognised industrial union, it should set up sub-committees for important crafts/occupations so that problems peculiar to the crafts receive adequate attention."

(Recommendation No. 129)

"Formation of centre-cum-industry and national industrial federations should be encouraged."

(Recommendation No. 130)

"We consider that industry-wise recognition is desirable, wherever possible. We are, therefore, not in favour of recognition being granted to plant unions in an area/industry wherein a union has been recognised for an industry/area as a whole".

(Para 23.58)

5.2 The Commission was conscious that unions being democratic and voluntary institutions, the basis on which a union should be organised was a matter to be determined by the workers themselves. Nonetheless, it has indicated some desirable lines of future development. It expects that its recommendation on recognition of a union as a bargaining agent will reduce multiplicity of unions at the plant level and help in the growth of viable unions. (Paras 20.19 and 20.20). It is in this context that the Commission has recommended that formation of craft/occupation unions should be discouraged. However, this objective may well remain to be achieved unless some positive steps are taken. The consensus reached at the 22nd Session of the Indian Labour Conference (1964) that 'recognition of categorywise/departmentwise unions should not be encouraged' indicates one possible line of action. Thus formation of craft/occupation unions may be discouraged by denying them the right to claim recognition, as a general rule; such a practice may serve as a disincentive to the workers to form craft/occupation unions. However, provision may have to be made to meet some very exceptional circumstances where there is an old history of the existence of craft/occupation unions and no general union to cover all categories of workers. An instance of this is the airlines industry where unions have been formed on craft/occupation basis. In such exceptional cases, the Labour Court may, if it considers it necessary for sufficient reasons to be recorded in writing, recommend grant of recognition to craft/occupation unions.

5.3 The objective of clause (b) of Recommendation No. 129 may be achieved by making a statutory provision that the rules of an industrial

union shall provide that it would set up sub-committees for important crafts/occupations to look into the problems peculiar to them. Alternatively, such a provision may be considered essential for an industrial union to make it eligible to claim recognition for an industry or an undertaking.

5.4 The Commission's recommendation for the formation of centre-cum-industry and national industrial federations deserves consideration as it would encourage collective bargaining at such levels; it would also help bring about standardisation in the working conditions of the workers. One way to encourage their formation may be to enable them to secure recognition as industrial unions for a Centre, wherever such unions have developed and there is a history of collective bargaining at that level. Recognition of such unions would raise the question of their rights vis-a-vis unions at the plant level. The Commission is not in favour of recognition being granted to plant unions in an area/industry where a union has been recognised for an industry/area as a whole. If this recommendation is accepted, in its present form, unions having substantial majority at the plant level, not affiliated to the industrial union, can create difficult situations. To get over this difficulty, it would seem desirable to provide for recognition of local unions at the plant level, with the right to take up with the management matters of purely local interest having no bearing on the industry as such or as a whole. Such a provision already exists in clause 6 of the criteria for recognition of unions under the code of discipline whereby a union can get recognition in a unit of an industry which has a recognised industrial union, if the unit-union has a membership of 50% or more of the workers of that unit.

(v) **Percentage of membership for Recognition of Unions.**

6.1 The relevant recommendations of the Commission are as under:

"A trade union seeking recognition as a bargaining agent from an individual employer should have a membership of at least 30 per cent of workers in the establishment. The minimum membership should be 25 per cent if recognition is sought for an industry in a local area."

(Recommendation No. 171)

"Where more unions than one contend for recognition, the union having a larger following should be recognised."

(Para 23.50)

6.2 The Commission has recommended a minimum of 30 per cent membership for recognition of a union in an establishment, as against 15% provided for in the code of discipline and 15% to 25% in the State enactments. However, since a union recognised under the scheme suggested by the Commission is expected to be the bargaining agent on behalf of all employees in an establishment it would appear reasonable to stipulate a somewhat higher percentage, say 30%, as recommended by the Commission. Evidently, a union with a smaller membership can hardly be in a position to function effectively as a real spokesman of the em-

ployees. The Commission's recommendation in this regard, therefore, merits support. The minimum membership of 25%, suggested for recognition of a union for an industry, in a local area, may also be accepted; the code provides for the same percentage for recognition of a union at the industry level.

6.3 The Commission's recommendation that only one union, the majority union, in an establishment/industry should be recognised may be accepted; it conforms to the present position under the code.

(vi) **Period of recognition**

7.1 The Commission has recommended as follows:

"The union thus recognised will retain its status for a period of two years and also thereafter till its status is effectively challenged".

(Para 23.56)

7.2 The above recommendation is on par with the existing arrangement under the code of discipline and may be accepted.

(vii) **Rights of recognised unions**

8.1 The relevant recommendation of the Commission, on this subject, is as under:

"A union recognised as the representative union under any procedure, should be statutorily given, besides the right of sole representation of the workers in any collective bargaining, certain exclusive rights and facilities to enable it to effectively discharge its functions.

Among these are the rights:

i) to raise issues and enter into collective agreements with employers on general questions concerning the terms of employment and conditions of service of workers in an establishment or, in the case of a representative union, in an industry in a local area;

ii) to collect membership fees/subscriptions payable by members to the union within the premises of the undertaking; or demand check-off facility;

iii) to put up or cause to be put out a notice board on the premises of the undertaking in which its members are employed, and affix or cause to be affixed thereon, notices relating to meetings, statements of accounts of its income and expenditure and other announcements which are not abusive, indecent, inflamatory or subversive to discipline;

iv) to hold discussions with the representatives of employees who are the members of the union at a suitable place or places within the premises of office/factory/establishment as mutually agreed upon;

v) to meet and discuss with an employer or any person appointed by him for the purpose, the grievances of its members employed in the undertaking;

iv) to inspect, by prior arrangement, in an undertaking, any place where any member of the union is employed;

vii) to nominate its representatives on the grievance committee constituted under the grievance procedure in an establishment;

viii) to nominate its representatives on statutory or non-statutory bipartite committees, e.g., works committees, production committees, welfare committees, canteen committees, and house allotment committees."*

(Para 23.57)

8.2 According to the Commission, there was a fair measure of unanimity in the evidence before it, on most of the rights listed above. Unions recognised under the code of discipline already enjoy most of the rights suggested by the Commission; the two additional rights recommended are the right to demand check-off and to nominate representatives on statutory bipartite committees e.g. works committees. In the evidence before it, the Commission found general support to the idea that, if "check-off" is to be introduced, the facility should be restricted to the recognised union only. The Commission is of the view that the right to demand check-off facilities should vest with the unions (recognised unions) and if such a demand is made by a recognised union, it should be made incumbent on the management to accept it; the Commission, it may be noted, however, has ruled out the 'closed-shop' system as neither practicable nor desirable. The Commission's recommendation regarding a recognised union having the right to demand "check-off" is based on the above consideration and may be accepted.

(Para 20.70)

8.3 The other right, for nomination on a Works Committee, is also intended to strengthen the Representative union; this, according to the Commission, would eliminate the most important cause of conflict and antipathy between unions and works committees. (Para 24.7) This recommendation may also be accepted.

(viii) **Rights of minority unions**

9.1 The Commission's recommendation in this regard is as under:

"The minority unions should be allowed only the right to represent cases of dismissal and discharge of their members before the Labour Court".

(Recommendation No. 174)

9.2 The above recommendation is influenced by the consensus reached at the Indian Labour Conference in 1964 that minority unions should

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* In the context of recognition, it may be noted, the Commission has envisaged the right of representation for recognised unions only on bipartite bodies. As for tripartite bodies, more particularly at the central or countrywide level, the Commission has suggested a different scheme which would provide representation to every central organisation covering 10% or more of the unionised labour force; the same pattern could perhaps be followed, as a corollary, at the lower levels also viz. the state, industry or even, where necessary, the plant.

enjoy the rights to represent individual grievances relating to discharge, dismissal and other conditions of service of their members. This was, however, later objected to by two of the central employers' organisations. Government did not, in the circumstances, insist on its implementation. Besides, experience in the working of the code of discipline over the past decade has revealed that minority unions have often tried to dislodge the recognised unions and disturb industrial relations. It has been particularly so where the difference in membership strength as between a minority union and the recognised union has been marginal. It does not, therefore seem appropriate to confer any unreserved right on minority unions without regard to their membership and performance.

III—MATTERS NOT COVERED BY THE NATIONAL COMMISSION

(i) Conceipt of Approved Union

10.1 A corrective to the situation mentioned in the preceding paragraph could be provided if registered unions are required to pass a quality test during the period of probation before they could claim recognition as a sole bargaining agent. The BIR Act already provides for the registration of 'approved' unions in respect of an industry in a local area; it seems desirable to adopt a similar practice and provide for accreditation as distinct from recognition, of unions as Approved unions, on their fulfilling certain specified conditions. It is difficult to get rid of the multiplicity of unions completely in the existing situation. Therefore, by having more than one Approved union for a unit or an industry it may be possible to ensure better performance by a larger number of unions. Another reason for adopting this practice is that unions of different persuasions cannot be compelled to merge themselves into a single trade union. The only way to foster situations in which some measure of internal discipline and cooperation may become possible on the part of unions would be to make them go through a quality test and see that they continue to abide by certain norms in order that they may stay in the Approved category. Otherwise, a minority union, with little prospect of attaining majority status, has no particular incentive for responsible behaviour; on the other hand, irresponsible behaviour may itself tend to get preferred as a contrivance for engineering undeserved majority.

10.2 In order to ensure that unions have the necessary inducement to secure accreditation as 'approved' unions, they may be given certain privileges. It is suggested that approved unions may be given the rights enumerated at items (ii) to (vi) of para 8.1, except that they should not have the right to demand check off and to nominate their representatives on bipartite committees; they should, however, in common with recognised unions, have the right to take up cases of dismissal and discharge of their members before the conciliation machinery or a labour court. The differ-

ence between an approved union and a representative union would then be that the latter will have the exclusive right to raise issues and enter into collective agreements with an employer on general questions concerning the terms of employment of all the workers in an establishment or an industry, as the case may be, and the further rights to check-off and nomination of its representatives on bipartite committees.

10.3 Since a representative union will be the sole bargaining agent on behalf of all the workers in an establishment or industry, any agreement entered into by it with an employer should be binding on all the workers of the establishment or the industry, as the case may be.

(ii) **Conditions for accreditation/recognition**

11.1 The Report of the National Commission on Labour does not specify the conditions which should be stipulated for a union to claim recognition as a Representative union. It is, however, necessary to make specific provisions in this behalf in the proposed law. The existing provisions in the code of discipline and some of the state enactments provide guidance in the matter. The most important conditions for recognition would no doubt be registration under the Trade Unions Act, 1926 and, as a qualitative test, the expiry of a period of one year. of unblemished record, from the date of registration. The list of unfair practices (Appendix-III) suggested by the Commission may be taken as the basis for judging the good conduct of a union (Paras 23.66 and 23.67).

11.2 It is suggested that a union desiring accreditation as an approved union and an approved union seeking recognition as a representative union should satisfy the following conditions:

(1) **For Approved unions**

i) It should be registered under the Trade Unions Act and should complete one year after such registration;

ii) it should not have been found responsible for any unfair labour practice (listed in Appendix-III), as determined by a labour court, during a period of 12 months preceding the date of making a claim for recognition;

iii) the membership of the union should be open to all categories of employees of the establishment or the industry, as the case may be. In th case of industrial unions its rules should provide for the setting up of Sub-Committees for important crafts/occupations to deal with their peculiar problems]; and

iv) its membership should not be less than a specified percentage, say 10 or 15.

(2) **For Representative unions**

i) it should have been accredited as an 'approved' union, and

ii) it should have a membership of not less than 30% employees for recognition in an establishment and 25% for recognition in an industry in a local area.

[The labour court may decide the local area for this purpose].

iii) **Conditions for disaccreditation/derecognition.**

12.1 The National Commission on Labour has not also dealt with the conditions for derecognition of unions. Provision may, therefore, have to be made that an approved/representative union would be liable to disaccreditation/derecognition if—

(i) **For Approved unions—**

i) it ceases to be a registered union; or

ii) it is found responsible for any unfair labour practice (listed in Appendix—III), as determined by a labour court; or

iii) on the complaint of a rival union or otherwise, its membership, after completion of two years of accreditation is found to be less than the prescribed minimum.

(2) **For Representative unions—**

i) it ceases to be an approved union; or

ii) on the claim of any approved union, the membership of the representative union, after completion of two years of its recognition as such, is found, on verification, to have lost the representative status.

IV—CONCLUSIONS

13. On the basis of the foregoing the following points are suggested for consideration:

(i) Statutory provision may be made in a Central law, say the Trade Unions Act, 1926, for—

(a) accreditation of a registered union, on fulfilling certain conditions, as approved unions.

(b) recognition of an approved union as a representative union in an establishment or industry, in a local area, as the case may be.

ii) For the purpose of accreditation of a union as an approved union or of recognition of an approved union as a representative union, a union should satisfy the conditions laid down in para 11.2.

iii) Membership of unions may be determined by verification of records, in accordance with the procedure prescribed in the rules framed under the Act; paid membership for three months during a period of six

months immediately preceding the date of reckoning may be the basic criterion for determining membership as at present.

iv) Where there are more than one approved unions in an establishment or industry, in a local area, the one having the largest membership may be recognised as the representative union. In an establishment where there is only one approved union it may be recognised as a representative union even if it has a membership of less than 30%.

v) The labour courts may decide the validity of claims of recognition, order cerification, wherever necessary to be carried out by the Industrial Relations Machinery/Registrar of Trade Unions and, on receipt of their report, order recognition as an approved or representative union, as the case may be. The labour court may also deal with matters suggested in paras 4.4 and 5.2.

vi) Provision may be made to enable unions to claim recognition at centre-cum-industry level and also to require that an industrial union should provide in its rules for the setting up of sub-committees on important crafts/occupations to be eligible to claim recognition for an industry.

vii) An approved/representative union may enjoy the privilege of accreditation/recognition for at least two years and also thereafter unless effectively challenged and disaccredited/derecognised.

viii) An approved/representatives union may have the rights specified in paras 10.2 and 8.1 respectively.

ix) An agreement entered into by a management with a representative union may be made binding on the management and all the employees of an establishment or industry, as the case may be.

x) The period of disaccreditation/derecognition in case of an approved or representative union may be one year.

Appendix I

Provisions incorporated in the State enactments, etc. regarding recognition of unions.

1. Bombay Industrial Relations Act, 1946

Under this act a union may apply to the registrar of trade unions for being entered into the list of 'approved' unions for an industry in a local area on fulfilling certain conditions. A union can claim registration as a 'representative' union for an industry in a local area if it has a member-

ship of not less than 25 per cent of the employees in that industry during a period of the immediately preceding 3 months. Where there is no representative union, a union can claim registration as a 'qualified' union for an industry in a local area if its membership is not less than 15 per cent of the employees in that industry in the local area. Where neither a 'representative' nor a 'qualified' union has been recognised for an industry in a local area, a union may seek registration as 'primary' union provided it has a membership of not less than 15 per cent of the total employees in any undertaking in such industry in the said area and fulfils the conditions for its being placed in the list of approved unions. (Gujarat has also adopted this enactment.)

2. (i) **Madhya Pradesh Industrial Relations Act, 1960**

Under the act any union may apply for registration as a 'representative' union in an industry in a local area provided its membership is open to every employee employed in the industry in the local area and has a membership of not less than 25 per cent of the employees employed in the industry in such a local area.

(ii) **Indian Trade Union (Madhya Pradesh Amendment) Act, 1960.**

The act provides that any representative union or where there is no such union any registered trade union may apply for being entered in the list of approved unions provided it has a membership of not less than 15 per cent of the employees.

3. **Industrial Disputes (Rajasthan Amendment Act, 1958.**

The act lays down that any union which has a membership of not less than 15 per cent of the employees in a union of an industry may seek registration as a 'representative' union.

4. **Bihar Central (Standing) Labour Advisory Board's Resolution, 1959.**

The resolution provides that where there is only one registered union in an industry or establishment that union must be recognised by the employer and where there are several unions in an industry or establishment, the one with the largest membership must be recognised. When there is a dispute about the representative character of unions for recognition, the dispute shall be referred to a tripartite independent board which will try to determine the representative character expeditiously. If the board so desires it may order voting by secret ballot to determine the representative character of unions for purposes of recognition.

TEXT OF THE RECOMMENDATIONS OF THE NATIONAL COMMISSION ON LABOUR ON UNION RECOGNITION

171. It would be desirable to make recognition compulsory under a central law in all undertakings employing 100 or more workers or where the capital invested is above a stipulated size. A trade union seeking recognition as a bargaining agent from an individual employer should have a membership of at least 30 per cent of workers in the establishment. The minimum membership should be 25 per cent if recognition is sought for an industry in a local area.

172. The proposed National/State Industrial Relations Commission (Recommendations 175-177) will have the power to decide the representative character of a union, either by examination of membership records, or if it considers necessary, by holding an election by secret ballot open to all employees*. The Commission will deal with various aspects of union recognition such as (i) determining the level of recognition—whether plant, industry, centre-cum-industry—to decide the majority union, (ii) certifying the majority union as a recognised union for collective bargaining and (iii) generally dealing with other related matters.

178. The main functions of the National/State IRCs will be.....
(c) certification of unions as representative unions.

129. (a) Formation of craft/occupation unions should be discouraged. Craft unions operating in a unit/industry should amalgamate into an industrial union.

(b) Where there is already a recognised industrial union, it should set up sub-committees for important crafts/occupations so that problems peculiar to the crafts receive adequate attention.

130. Formation of centre-cum-industry and national industrial federations should be encouraged.

173. The recognised union should be statutorily given certain exclusive rights and facilities, such as right of sole representation, entering into collective agreements on terms of employment and conditions of service, collection of membership subscription within the premises of the undertaking, the right of check-off, holding discussions with departmental representatives of its worker members within factory premises, inspecting, by prior agreement, the place of work of any of its members, and nominating its representatives on works/grievance committees and other bipartite committees.

174. The minority unions should be allowed only the right to represent cases of dismissal and discharge of their members before the labour court.

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* Subject to minute of disset by Sarvashri Vasavada, Ramanujam, Malviya and Ramananda Das.

UNFAIR LABOUR PRACTICES

(1) For the union to advise or actively support or to instigate an irregular strike or to participate in such strike.

Note: 'An irregular strike' means an illegal strike and includes a strike declared by a trade union in violation of its rules or in contravention of its conditions of recognition or in breach of the terms of a subsisting agreement, settlement or award.

(2) To coerce workers in the exercise of their right to self-organisation or to join unions to refrain from joining any union, that is to say:

(a) for a union or its members to picket in such a manner that non-striking workers are physically debarred from entering the work-place;

(b) to indulge in acts of force or violence or to hold out threats of intimidation, in connection with a strike against non-striking workers or against managerial staff.

(3) To refuse to bargain collectively in good faith with the employer.

(4) to indulge in coercive activities against certification of a bargaining representative.

(5) To stage, encourage or instigate such forms of coercive actions as wilful 'go-slow' or squatting on the work premises after working hours or 'gherao' of any of the members of the managerial staff.

(6) To stage demonstrations at the residence of the employers or the managerial staff members.

Item 4

TRADE UNIONS INCLUDING PROCEDURE FOR REGISTRATION AND OTHER MATTERS

(Extract)

3.1 .....the following points emerge for consideration :

(i) It may be necessary to provide for certain restraints, consistent with the requirements of the Constitution of India, on the freedom of association guaranteed by the constitution to workers in undertaking trade union activities.

(ii) Registration may be made compulsory for all trade unions and also the central employers' and workers' organisations. Labour courts may be vested with powers to certify both the employers' and workers' organisations as representative unions of employers or workers, as the case may be. Only registered unions of workers should be considered for accreditation as approved unions and later for recognition of representative unions. Statutory provisions for the recognition of representative unions may help in reducing inter-union rivalries.

(iii) The time limit of 30 days, recommended by the Commission, for grant/refusal of registration by the Registrar may be adhered to. The registrars may be instructed, through departmental orders, to specify and indicate all the defects and mistakes in an application for registration as soon as possible after the receipt of the application.

(iv) Registration of a union may be cancelled if it fails to comply with the conditions suggested by the Commission in recommendation No. 139, and also if it is found responsible by a labour court, for any of the unfair labour practices that may be forbidden by law.

(v) (a) The commission's recommendation No. 140 relating to appeals to labour courts, over the registrar's orders of cancellation of registration may be accepted, with the modification that provision may be made for appeal to the labour court both in cases of refusal and cancellation of registration. (b) A provision for regulating applications for re-registration of unions may be incorporated in the Trade Unions Act. Since the Commission wants a union to be barred from re-registration for a period of six months, it should be possible to consider, in the meanwhile, the interim recognition of the next largest approved union in an undertaking or industry.

(vi) The Commission's recommendations concerning the raising of the minimum membership of unions and the minimum membership fee (as in recommendation No. 137) may be accepted. However, in the case of the minimum membership fee, it is for consideration whether there should be two separate minima—one say Re. 1, for organised industries and the other, say 50 paise for unorganised ones.

(vii) (a) Outsiders may continue to play their role in the trade union movement; but the number of outsiders in union executive may be reduced from the present 50% to say 30% in respect of all unions irrespective of their membership.

(b) Ex-employees may not be considered as outsiders except when they are dismissed for misconduct/moral turpitude.

(c) Internal leadership may be promoted by discouraging the practice of union leaders holding offices in more than one union; since the Constitution does not permit a legal ban, this can be discouraged by way of a convention. A similar convention may be established in respect of holding offices in political parties.

(viii) Matters relating to intra-union rivalry may rest with the labour courts as suggested in the paper on IRCs and labour courts. Provision may be made in the law that either group in a union can approach a labour court to get an intra-union dispute resolved. The management should also have the right to approach the appropriate government to refer a dispute, arising from intra-union rivalry, to a labour court.

(ix) Both the 'union-shop' and 'closed-shop' are neither desirable nor practicable in India. However, check-off facility may be granted to a union making a suitable provision under the payment of wages Act, 1936, permiting deduction of union membership fees and other union dues from the workers' wages by the managements and its payment to a recognised union wherever it demands such facility. The workers may authorise such deductions through 'authorisation slips', which may be considered as valid for one year.

TEXT OF THE RECOMMENDATIONS OF THE NATIONAL COMMISSION ON LABOUR ON TRADE UNIONS

128. The basis on which a trade union should be organised is a matter to be determined by workers themselves, in the light of their own needs and experience. They have to grow according to the dictates of their members, but within the constraints set on them by the law of the land.

129. (a) Formation of craft/occupation unions should be discouraged. Craft unions operating in a unit/industry should amalgamate into an industrial union.

(b) Where there is already a recognised industrial union, it should set up sub-committees for important crafts/occupations so that problems peculiar to the crafts receive adequate attention.

130. Formation of centre-cum-industry and national industrial federations should be encouraged.

136. Trade union registration should be made compulsory for all plant unions/industrial federations, but not for the central organisations.

142. Registration of employers' organisations should be made compulsory. Arrangements should be made through the Industrial Relations Commission for certification of employers' organisations at industry/area level for purposes of collective bargaining.

138. The registrar should be time-bound to take a decision regarding grant/refusal of registration. He should complete all preliminaries leading to registration within thirty days of the receipt of application, excluding the time which the union takes in answering queries from the registrar.

139. The registration of a union should be cancelled if (i) the annual returns discloses that its membership fell below the minimum prescribed for registration, (ii) the union fails to submit its annual return wilfully or otherwise, and (iii) the annual return submitted is defective in material particulars and these defects are not rectified within the prescribed period.

140. (a) An appeal should lie to the labour court over the registrar's orders of cancellation of registration.

(b) Application for re-registration should not be entertained within six months of the date of cancellation of registration.

137. (a) The minimum number required for starting a new union should be raised to 10 per cent (subject to a minimum of 7) of regular employees of a plant or 100, whichever is lower.

(b) The minimum membership fee of union should be raised from the present level of 25 paise per month to Re. 1 per month.

132. (a) There should be no ban on non-employees, holding positions in the executive unions.

(b) Steps should be taken to promote internal leadership and give it a more responsible role.

(c) Internal leadership should be kept outside the pale of victimisation.

(d) To hasten the process of building up internal leadership, the permissible limit of outsiders in the executives of the union should be reduced.

(e) Ex-employees should not be treated as outsiders.

134. Intra-union rivalries are best left to the central organisation concerned to settle. The labour court should step in at the request of either group or on a motion by the appropriate government, in cases where the central organisation is unable to resolve the dispute.

Para 20.84

The Act may be amended to provide that in case of a disputed election the matter should be referred to the labour court.

135. (a) Closed shop is neither practicable nor desirable. Union shop may be feasible, though some compulsion is in-built in this system also.

(b) Neither should be introduced by statute. Union security measures should be allowed to evolve as a natural process of trade union growth.

(c) An enabling provision to permit check-off on demand by a registered union would be adequate.

131. Apart from paying attention to the basic responsibilities towards their members, unions should also undertake social responsibilities such as (i) promotion of national integration, (ii) influencing the socio-economic policies of the community through active participation in the formulation of these policies, and (iii) instilling in their members a sense of responsibility towards industry and the community.

VERIFIED MEMBERSHIP OF THE FOUR CENTRAL TRADE UNIONS ORGANISATIONS

Year	INTUC	AITUC	HMS	UTUC	Total verified membership
1952-53	9,19,258 (56.3%)	2,10,914 (12.9%)	3,73,459 (22.9%)	1,29,242 (7.9%)	16,32,873
1955-56	9,71,740 (55.5%)	4,22,851 (24.1%)	2,03,798 (11.5%)	1,59,109 (9.1%)	17,57,498
1959-50	10,53,386 (57.4%)	5,08,962 (26.0%)	2,86,202 (14.6%)	1,10,034 (5.6%)	19,58,584
1962-63	12,68,339 (57.4%)	5,00,967 (23.7%)	3,29,931 14.9%)	1,08,982 (4.0%)	22,08,219
1966	14,17,553 (59.5%)	4,33,564 (18.2%)	4,36,977 (18.3%)	93,454 (4.0%)	23,81,548

Item No. 5

DEFINITION OF THE TERMS 'INDUSTRY AND WORKMAN'

(Extract)

The following issues are for consideration:

A—Definition of 'Industry'

5.1 The object of providing a machinery, for settling disputes, to a wider range of activities, which are at present outside the purview of the Industrial Disputes Act or whose coverage is not very explicit, may be achieved either by including in the definition of 'industry' a list of such activities or by widening the definition on a functional or operational basis, so as to cover activities resulting, on the one hand, in the production or distribution of material goods or services and, on the other, in the fulfilment of certain needs of the community, like those in the fields of education, health, recreation, entertainment and professional services, whose coverage is envisaged. There could be three ways of doing so: one may be extension of the provisions of the Industrial Disputes Act to include the designated activities to be enumerated, for coverage under the proposed definition of 'industry'; the second could be the incorporation of a separate chapter in the Industrial Disputes Act for coverage of services and activities which fulfil certain special needs of the community—as distinct from the production and distribution of material goods—and provision of an alternative machinery for the settlement of connected disputes; and the third, while retaining the existing definition of 'industry' in the Industrial Disputes Act and the related provisions, could be a separate special legislation, complete in itself, for determining and regulating, the services and activities (not covered under the Industrial Disputes Act), the resultant disputes and the machinery considered appropriate for their settlement.

If, however, neither of these alternatives, by itself, is found suitable for the purpose, a combination of one or more of them could be considered for arriving at a more broad-based definition.

B—Definition of 'Workman'

(i) The definition of 'workman' may be amended so as to cover expressly teachers, medical representatives and salesmen of pharmaceutical

and allied industries, and persons engaged in recreational or entertainment work.

(ii) The definition may also be amended so as to exclude employees drawing wages exceeding, say, Rs. 1000 per month and to cover all manual, clerical and supervisory employees drawing wages upto that limit.

(iii) The existing exclusion of managerial or administrative personnel —as indeed, of those employed in the defence and police services—may continue.

Item No. 6

RIGHT TO STRIKE/LOCK-OUT

I—BACKGROUND

1.1 'The right to strike, subject to regulation by law, is proclaimed by the Inter-American Charter of Social Guarantees..... The concept is indeed a political and economic rather a legal one, and although it is.... expressed in many national constitutions, particularly in Latin America, it is difficult to express it in an appropriate legal form. Any such expression of it almost inevitably tends either to be so absolute as to overlook necessary qualifications or to be so qualified as to lose most of its value as a statement of right. Such legal recognition may be also tend to place a premium on industrial conflict rather than on the settlement of industrial disputes by negotiation and other peaceful means.'*

1.2 The ILO Conventions (Nos. 87 and 98) concerning the Freedom of Association and Protection of the Right to Organise, 1948 and the Right to Organise and Collective Bargaining, 1949, cover various aspects of association of workers and other connected matters; they do not deal specifically with the right to strike. A resolution adopted by the International Labour Conference in 1957, however, "calls upon the governments of member states..... to adopt laws..... ensuring the effective and unrestricted exercise of trade union rights, including the right to strike, by the workers....." The ILO Governing Body Committee on Freedom of Association was also of the view that the right to strike should be regarded as a trade union right.** It held that 'the right to strike and that of organising union meetings are essential elements of trade union rights and measures taken by the authorities to ensure the observance of the law should not, therefore, result in preventing unions from organising meetings during labour disputes'.[1] The committee thought "that in most countries strikes are recognised as a legitimate weapon of trade unions in furtherance of their members' interests so long as they

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* The International Protection of Trade Union Freedom—C. Wilfred Jenks (P. 359).

** Case No. 60 (Japan) 12th Report, para 53.

[1] Case No. 28 (Jamaica), 2nd Report, para 68.

are exercised peacefully and with due regard to temporary restrictions placed thereon (for example, cessation of strikes during conciliation and arbitration procedures, refraining from strikes in breach of collective agreements)[1]. In another case the committee stated that 'the right to strike is generally admitted as an integral part of the general right of workers and their organisations to defend their economic interests' but that 'in the case of essential services such as the railways, due notice of the intention to strike is normally required and strikes may be temporarily restricted until existing means of negotiations, conciliation or arbitration have been exhausted.'[2]

1.3 It would be of interest to refer to the provisions relating to the "right to strike" in the labour laws of some of the western countries. In **USA** state intervention is limited to actual or threatened strikes and lock-outs, which imperil national health or safety. In such cases the President of USA is empowered to appoint a fact-finding board of enquiry; he can obtain court injunction for restraining strike for a maximum period of 80 days to enable the parties to "cool off". Right to strike is thus granted in the USA except under certain specified circumstances. Under the US Labour-Management Relations Act 1947 (also known as Taft-Hartley Act) strikes are prohibited in all industries during the 60-day notice period prior to modification or termination of a contract. Generally, a no-strike clause featuring in most contracts makes it obligatory for the union to abstain from strikes during the currency of a contract. Many contracts themselves provide penalties such as termination of the entire contract or suspension of union shop arrangement for the defiance of no-strike clause. Strikes relating to secondary boycotts, recognition of an uncertified union and jurisdictional disputes are prohibited under the clauses on unfair labour practices in the 1947 Act. The US Act makes it unlawful for an individual employed by the United States or any agency thereof including wholly-owned government corporations to participate in any strike. In **Australia**[3] a strike is made illegal either by statutory prohibition or by an anti-strike clause in an award. Most of the awards carry a clause which prohibits any ban on work during the term of the award. The states' laws mostly prohibit strikes but such provisions are not invoked uniformly in all states. It has been observed that while the Australian system of compulsory conciliation and arbitration has not succeeded in arresting the occurrence of strikes, the pattern of penalties evolved in the system has reduced the duration of strikes. In the **United Kingdom**

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1 Case No. 5 (India) 4th Report, para 27.

2 Case No. 47 (India), 6th Report, para 724.

3 Pages 43 and 44 of NCL Papers for discussion with M.Ps.

also there are enactments* which impose certain restrictions on the right to strike. In this connection the relevant provisions of some of the enactments may serve as a good illustration. Section 5 of the Conspiracy and Protection of Property Act, 1875 prohibits any strike which endangers human life, causes serious bodily injury or exposes valuable property to destruction or serious injury. Section 4 of the same Act prohibits strike in public utility services such as gas or water supply. Sections 220 and 221 of the Merchant Shipping Act, 1894 prohibit certain acts of commission and omission on the part of seamen/apprentice. There is no law in the UK which forbids civil servants to strike though it is a disciplinary offence for them to take part in strikes. In the **USSR** strikes have no place at all in labour laws and practices.

1.4 The Industrial Disputes Act, 1947 which is the main instrument for prevention and settlement of industrial disputes in India does not specifically give the workers/employers any right to strike/lock-out. The Act, however, places some restrictions on strikes/lock-outs in public utility services. Similarly, there is a general prohibition of strikes/lock-outs in any industry under certain conditions. The appropriate government is also empowered to pass an order prohibiting the continuance of any strike or lock-out in respect of any dispute when it is referred to a board or court or tribunal.

1.5 In 1958 a voluntary code of discipline was evolved to put some check on the tendency to resort to strike or lock-out on the slightest pretext. The code requires workers and employers not to resort to strike or lock-out without fully exhausting the procedures available for the redress of their grievances and also without giving a notice. In certain industries such as plantations and mines other than coal the period of notice has also been specified by agreement between the parties. Likewise, the State Bank of India, the Reserve Bank of India and the Life Insurance Corporation of India and their employees' organisations have agreed that there should be no strike or lock-out without a notice for a specified period.

1.6 Some sections of workers in India do not, however, enjoy the 'right to strike'. Amongst them are the persons belonging to the police and defence services. Employees of the Government of India, except for a section of the industrial employees (i.e. those whose salary does not exceed Rs. 500 per mensem and who hold non-gazetted posts in certain establishments such as ports and docks, defence installations, mines and factories) cannot go on strike in terms of Rule 7(ii) of the Central Civil Services (Conduct) Rules, 1964 which lays down that "No Government

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* The Conspiracy and Protection of Property Act, 1875, The Electricity (Supply) Act, 1919, The Electricity Act, 1947, The Police Act, 1919, The Merchant Shipping Act, 1894 and The Post Office Act, 1953.

Servant shall..... (ii) resort to or in any way abet any form of strike in connection with any matter pertaining to his service or the service of any other government servant." Section 3 of the Essential Services Maintenance Act, 1968 stipulates that "if the central government is satisfied that in the public interest it is necessary or expedient so to do, it may by general or special order, prohibit strikes in any essential service specified in the order" for an initial period of six months which can be extended to a further period of six months, if so required in the public interest.

1.7 It has often been claimed that the 'right to strike' is a fundamental right. In this connection it may be relevant to quote the following judicial pronouncements of the supreme court:

(i) **Chandramalai Estate, Ernakulam, V. Its Workmen** (AIR, 1960, .S C. 902)

"It is true that a strike is a legitimate and sometimes an unavoidable weapon in the hands of the labour. At the same time, it is important to remember that an indiscriminate and hasty use of this weapon should not be encouraged. It is not right for labour to think that for any kind of demand a strike can be commenced with impunity without exhausting the reasonable avenues for peaceful achievement of their objects...."

(ii) **Ghosh O. V. v. E. X. Joseph** (AIR. 1963 S.C. 812)

While dealing with the prohibition of strike under Rule 4A of the then C.C.S. (Conduct) Rules, 1955 the Supreme Court quoted an earlier case namely Kameshwar Prasad V. State of Bihar (AIR S.C. 1166) and held:

"....In so far as the rule prohibits participation in a strike it is valid because there is no fundamental right to resort to strike."

1.8 It would, therefore, appear that the right to strike can hardly be claimed as fundamental and inalienable right. It can at best be considered as a right derived from the 'right to organise' guaranteed by the constitution. Another aspect of it is that this right is to be exercised only when other peaceable methods of settling industrial disputes are not available to the workers. If voluntary arbitration, or failing an agreement as to voluntary arbitration, adjudication can resolve industrial disputes, there is no reason why the workers should insist upon the right to strike and the employers upon the right to lock-out. In fact, it is desirable that strikes/lock-outs are avoided by the workers/employers and the existing machinery for the settlement of industrial disputes utilized by the parties to the maximum extent.

1.9 The National Commission on Labour is of the view that 'conceptually this right is recognised in all democratic societies' but 'reasonable restraint on the use of this right is also recognised'. The degree of freedom granted for its exercise, however, varies according to the social, economic and political variants in the system'. The Commission has further stated that 'for safeguarding public interest, the resort to strike/

lock-out and, in some cases, the duration of either are subject to rules and regulations either voluntarily agreed to by the parties or statutorily imposed. In the Indian situation, the Commission has stressed the need to view the implications of the right to strike/lock-out from the context of planned economy. It has come to the conclusion that there should not be a total ban on the right to strike/lock-out; nor should the parties be given an unrestricted right to resort to direct action. It has recommended that in certain essential industries/services, wherein a cessation of work may cause harm to the community, the right to strike needs to be curtailed but with the simultaneous provision of an effective alternative like arbitration or adjudication to settle disputes. The Commission has also recommended that in non-essential industries, the parties should be free to resort to direct action for 30 days where collective bargaining has failed before the dispute is taken up for adjudication by the proposed IRC.

1.10 The Commission has also recommended that every strike should be preceded by a strike ballot open to all members of the union concerned and that the strike decision must be supported by two-thirds of the members present and voting. In its view, the law should provide for prior notice of strike/lock-out in respect of all industries/services.

1.11 In their minute of dissent, four worker members agree that the right to strike is not a fundamental right but they claim that it is a basic or democratic right. They would not like to ban strikes and lock-outs by law but to make them superfluous by making available to labour superior means of settling disputes. They have not agreed with the recommendation of the Commission which makes a strike/lock-out unavoidable for 30 days in certain cases.

1.12 The recommendations of the National Commission were discussed at the 20th Session of the Labour Ministers' Conference and the 26th Session of the Indian Labour Conference in November, 1969. At the Labour Ministers' Conference, the State representatives expressed the view that the 30 days' waiting period, as recommended by the Commission in the case of strikes/lock-outs in non-essential industries/services was uncalled for. The representative of the Government of Maharashtra was of the opinion that the appropriate government, and not parliament as recommended by the National Commission, should have the powers to declare certain industries as essential industries. According to the views expressed by the representative of the Government of West Bengal at the Indian Labour Conference, imposition of a ban on strikes in essential industries/services was not desirable. The AITUC representative considered the Commission's recommendation on this subject as 'retrograde and reactionary'. The representatives of employers as well as of the INTUC and the UTUC were also not in favour of 30 days' waiting period of direct action in non-essential industries. In their written comments, the INTUC maintained that "if a union wants to go on strike, it should have

the freedom to go on strike; similarly if it wants to go to adjudication, it should have that freedom too. There should be no compulsion on the workers to go on strike for 30 days just to get adjudication. The recommendation is absurd." In a recent publication giving its comments on the recommendations of the Commission, the AITUC has also vehemently criticised the views of the Commission in regard to the right to strike. It has stated:

"the history of the right to strike in our country gives ample testimony to the fact that this crucial right has been under constant attack by the employers, their apologists and the government. The Industrial Disputes Act, 1947 divided strikes into 'legal' and 'illegal'. Court judgments further sub-divided legal strikes into 'justified' and 'unjustified'—all illegal strikes being treated **ipso facto** as unjustified. The code of discipline sought to lay down certain 'moral' curbs on the legal justified strikes. The Essential Services Maintenance Act statutorily bans strikes in the so-called essential services, the list of which can be enlarged at will by the executive. Now the National Commission on Labour propose to amalgamate all these curbs and restrictions and to add a few of their own. Of course, in order to appear as impartial philosophers guided solely by public good, and to hide their real intentions, the National Commission on Labour has thrown in high sounding declarations about the sanctity of the right to strike in a democratic society. And the curbs are sought to be imposed as necessary in the interest of social objectives and planned development. Then it is sought to cover the real intent and to parade as progressives."

1.13 At the second meeting of the Consultative Committee of Parliament for the Department of Labour and Employment (December 17, 1969), Shri Banka Behary Das (PSP) expressed the view that "there should be no restriction on the right to strike; however, after appropriate machinery for settlement of disputes has been established this right might go into disuse".

1.14 *The relevant recommendations of the Commission concerning* prohibition of strikes/lock-outs are set out in Appendix-I. These are examined in the succeeding paras.

II—MATTERS COVERED BY THE RECOMMENDATIONS OF THE NATIONAL COMMISSION ON LABOUR

(i) Curtailment of the right to strike in certain essential industries/services.

2.1 The relevant recommendations of the Commission are:

"In certain essential industries/services where a cessation of work may cause harm to the community, the economy or to the security of the nation itself, the right to strike may be curtailed but with a simultaneous

provision of an effective alternative, like arbitration or adjudication, to settle the dispute."

(Recommendation No. 169).

"The democratic ideals of the State prevent it from abridging individual freedom, but its socialist objectives justify the government's regulation of such freedom to harmonize it in a reasonable measure with the interests of the society. What seems called for, therefore, is a reconciliation of these two points of view. While we are not in favour of a ban on the right to strike/lock-out, we are also not in favour of an unrestricted right to direct action. In our view, the right to strike is a democratic right which cannot be taken away from the working class in a constitutional set up like ours. Even from the practical point of view, we will not favour such a step. Taking away the right of workers to strike may only force the discontent to go underground and lead to other forms of protest which may be equally injurious to good labour-management relations. At the same time there are certain essential industries/services wherein a cessation of work may cause harm to community, the economy or the security of the nation itself and as such, even this right may justifiably be abridged or restricted, provided, of course, a specific procedure is laid down for remedies and redressal of grievances. Therefore, in such industries, the right to strike may be curtailed but with the simultaneous provision of an effective alternative like arbitration or adjudication to settle disputes. We do not wish to enumerate the industries/serves that should be classified as 'essential'; the listing of 'essential' industries should be left to the parliament to decide."

(Para 23-43)

"In essential industries/services, when collective bargaining fails and when the parties to the dispute do not agree to arbitration, either party shall notify the IRC with a copy to the appropriate government, of the failure of negotiations whereupon the IRC shall adjudicate upon the dispute and its award shall be final and binding upon the parties."

(Recommendation No. 184)

2.2 In their minute of dissent Sarvashri S. R. Vasavada, G. Ramanujam, R. K. Malaviya and Ramananda Das have stated that following failure of direct negotiations and nonavailability of arbitration in essential industries/services the disputed points should automatically go to the IRC. They also feel that it is not possible to list out all the essential industries and services in a definitive way as these will keep on changing, from time to time, and additions may have to be made. They would like the power to define and name essential industries and services and to add to the list of entries or delete therefrom to rest with the parliament. (Para 64—Pages 493-494).

2.3 In this connection, it may be necessary to review the provisions

in the Industrial Disputes Act, 1947 in regard to restriction on prohibition of strikes/lock-outs. These are mentioned below:

(a) **Prohibition of strikes/lock-outs in public utility service***

Section 22 of the Industrial Disputes Act prohibits a strike/lock-out in a public utility service in the following situations:-

(1) without giving to the other party a six weeks' notice before strike/lock-out;

(2) within fourteen days of giving such notice;

(3) before the expiry of the date of strike/lock-out specified in the notice; and

(4) during the pendency of conciliation proceedings and seven days after the conclusion of such proceedings.

(b) **General prohibition of strike/lock-out in any industry.**

Section 23 of the Industrial Disputes Act provides for prohibition of strikes/lock-outs in the following situations:

(1) during the pendency of conciliation proceedings before a board and seven days after the conclusion of such proceedings;

(2) during the pendency of adjudication proceedings before a court/tribunal and two months after the conclusion of such proceedings;

(3) during the pendency of arbitration proceedings before an arbitrator and two months after the conclusion of such proceedings; and

(4) during the period of operation of settlement or award in respect of any matter covered thereunder.

(c) **Prohibition of continuance of any strike or lock-out when a dispute is under reference to a Board, etc.**

Section 10(3) of the Industrial Disputes Act empowers the appropriate government to make an order prohibiting the continuance of any strike or lock-out in respect of any dispute, when a reference is made to a board/court/tribunal.

2.4 It would thus be seen that the Industrial Disputes Act already provides for some measures of restraint on strikes/lock-outs in public utility services. The Commission's recommendations are based on the conclusion that the existing statutory provisions have not succeeded in curtailing work-stoppages. As already stated, the AITUC representative said at the ILC (November 1969) that the recommendations of the Commission on the right to strike were 'retrograde and reactionary'. Shri Banka Behary Das (PSP) expressed the view that the 'right to strike' should remain un-

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* Section 2(n) (vi) of the Act authorises the appropriate government to declare any industry covered under the first schedule (which includes industries such as banking, coal, cement, cotton textiles, etc.) to be a public utility service in public interest for such period as it may desire.

fettered'. The Hind Mazdoor Panchayat in their comments have condemned the National Commission on Labour, 'as it has curtailed even the existing right to strike in case of the employees of the so-called essential services which it has not defined.' For the reasons stated by the Commission and also in view of the existing restrictions on strikes in certain circumstances it is worth considering whether the recommendation (No. 169) should be accepted. There does not, however, seem to be any case for leaving it to the parliament to list out the essential industries/services. It may be advantageous to list such industries/services in the Act, with an enabling provision, empowering government to add to certain industries. Government are already empowered under section 40 of the Industrial Disputes Act to add to the First Schedule* any industry. They may retain this power.

(ii) **Restrictions imposed on 'non-essential' industries/services.**

2.5 The National Commission has recommended:—

"In the case of non-essential industries/services following the failure of negotiations and refusal by the parties to avail of voluntary arbitration, the IRC after the receipt of notice of direct action (but during the notice period) may offer to the parties its good offices for settlement. After the expiry of the notice period, if no settlement is reached, the parties will be free to resort to direct action. If direct action continues for 30 days, it will be incumbent on the IRC to intervene and arrange for settlement of the dispute."

(Recommendation No. 185).

2.6 It would appear that in case of 'non-essential' industries, following failure of negotiations and refusal by the parties to avail of voluntary arbitration, the Commission would permit workers to go on strike or the employers to declare a lock-out. But it will be only after 30 days of such strike/lock-out that it will become obligatory on the part of the concerned IRC to take up the dispute for adjudication. In their minute of dissent, the four worker members have criticised this recommendation allowing for a waiting period of 30 days as 'ill-conceived and unpractical'. In their view, the recommendation is 'ill-conceived' because a strike or lock-out becomes compulsory upto 30 days, if one of the parties wants adjudication by IRC and it would interfere with the right to not-to-go-on strike or not-to-declare a lock-out. Adjudication which is a device to avert a strike or lock-out, or to make a strike or lock-out superfluous, has been turned into a compulsory device to invite strikes and lockouts albeit for a month. (Para 46, Page 491).

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* Includes industries which may be declared to be public utility services.

2.7 At the Labour Ministers' Conference (November, 1969) there was unanimity among the state government representatives that the 30 days' waiting period in the case of strikes/lock-outs in non-essential industries/services, before the IRC could intervene, was neither necessary nor desirable in the interest of industrial harmony and growth of trade union movement and therefore this recommendation should not be accepted. At the Indian Labour Conference (November 1969) also the consensus was that a 30-day waiting period before the IRC could intervene in cases of disputes in non-essential industries/services was unnecessary and uncalled for and should be dispensed with.

2.8 In its written comments, the Delhi Administration has stated that in the case of non-essential services, when there is a strike or lock-out and if it is necessary to prohibit it, state governments will have to appear like petitioners before the Industrial Relations Commission. This procedure may involve a good deal of delay in the disposal of cases and the governments may be silent spectators in the whole affair. According to the Government of Mysore, there is every possibility that strikes continuing for 30 days may pose law and order problems.

2.9 In the paper on IRCs and labour courts it has been suggested that the Commission's recommendation regarding 30 days' strike may not be accepted.

(iii) **Notice of strike/lock-out and strike ballot**

2.10 The Commission has recommended:

"The effects that flow from cessation of work warrant the imposition of certain restrictions on work stoppages. Every strike/lock-out should be preceded by a notice. A strike notice to be given by a recognised union should be preceded by a strike ballot open to all members of the union concerned and the strike decision must be supported by two-thirds of members present and voting."

(Recommendation No. 170).

2.11 In order to meet the situation where union leadership calls for a strike without consulting the union members or sometimes against their wishes, the Commission has recommended that every strike should be preceded by a strike ballot open to all members of the union concerned and that the strike decision must be supported by two-third majority present and voting. The notice of strike should contain a clause to show that such a ballot has been taken and the requirement about the needed majority has been satisfied (para 23.44). The Commission has made the recommendation to prevent the trade unions from resorting to strikes on flimsy grounds and also where the rank and file do not subscribe to the views of the leadership. The Commission, however, seems to make the strike ballot a necessary precondition only in cases of strikes by recognised unions. It is not clear why the strike ballot should be made com-

pulsory for the recognised unions only. It would be desirable to make this condition compulsory for all registered trade unions. Under the ID Act, notice of strike/lock-out is required to be served by the parties only in case of public utility services. Clause II(iii) of the code of discipline, however, provides that there should be no strike or lock-out without notice.

2.12 Shri Manohar Kotwal in his minute of dissent has stated that the Commission has not made any distinction between 'normal' strikes in support of economic demands and other strikes like 'defensive', 'token' 'political' or 'sympathetic' strikes. In his view a notice of strike or ballot need not be necessary in case of such strikes.

2.13 The INTUC, which is opposed to the principle of determination of the representative character of a union through a ballot, points out that this recommendation, which speaks of a strike after a ballot of all the members of the unions only, is inconsistent with recommendation No. 172, which contemplates a ballot by all workers including non-members for deciding the representative character of a union. The Hind Mazdoor Panchayat has criticised the National Commission for having made any strike, without notice, illegal, no matter how grave the provocation by the employer. The Council of Indian Employers agrees with the desirability of regulating the right to strike/look-out, as proposed in the recommendation. It believes that every strike whether it is an economic, political, sympathetic or token strike should be preceded by a definite notice to the management. It is equally important that workers should not be led into strikes against their own wishes; it is, therefore, necessary to provide for a strike ballot in all cases.

2.14 The Commission's recommendation aims at preventing disruption to industrial peace. It merits adoption with the proviso that strike ballot should be taken in case of all strikes/lock-outs and by all registered unions, whether or not recogninesd.

(iv) ***Prohibition of continuance* of strike on the grounds of security of the State, national economy or public order.**

2.15 The National Commission has recommended that:

"When a strike or lock-out commences, the appropriate Government may move the Commission to call for the termination of strike/lock-out on the ground that its continuance may affect the security of the State, national economy or public order and if after hearing the government and the parties concerned the Commission is so satisfied, it may, for reasons to be recorded, call on the parties to terminate the strike/lock-out and file their statements before it. Thereupon the Commission shall adjudicate on the dispute."

(Recommendation No. 186).

2.16 In their minute of dissent, the four worker-members of the Commission have criticised the Commission's recommendation on the

ground that the appropriate Government has been reduced to the status of a mere petitioner before the Industrial Relations Commisison. According to them the State, as the representative of the community, must have the right at all times and in all stages of an industrial dispute, to step in and direct the parties to call off the strike or lock-out or prevent them from going on strike or enforcing a lock-out and submit their dispute to adjudication by its nominee.

2.17 The Council of Indian Employers has, in its comments, appreciated the argument advanced by many state governments that they should have power to prohibit a particular strike/lock-out and refer the dispute to adjudication, whenever they considered it necessary in the interest of public order, safety, and health. In order to meet this legitimat demand, the Council has suggested that the appropriate government may be empowered even under the new scheme to prohibit continuance of a particular strike/lock-out and to refer the dispute to adjudication by the IRC, if it is found to affect public order, safety and health.

2.18 In the paper on Industrial Relations Commission it has been suggested that there are no strong grounds in favour of the proposal to appoint the IRC. The Commission's recommendation (No. 186) may not, therefore, be accepted; the existing provisions under the ID Act appear to serve the purpose adequately.

(v) **Payments to be made or withheld for the strike/lock-out period and reinstatement of an employee with back wages.**

2.19 The National Commission has recommended:

"(a) The Commission will have powers to decide to pay or withhold payments for the strike/lock-out period under certain circumstances; (b) If during the pendency of the strike or thereafter, the employer dismisses or discharges an employee because he has taken part in such strike, it would amount to unfair labour practice, and on proof of such practice, the employee will be entitled to reinstatement with back wages."

(Recommendation No. 188)

2.10 In para 23.64 of its report, the National Commission has specified the circumstances under which the IRC will have powers to order payment or withhold payment for the periods of strike or lock-out, as the case may be. These are mentioned below:—

"(i) If the Commission substantially grants the demands in support of which the strike was called and comes to the conclusion that the said strike was justified because of the refusal of the employer to grant the said demands, the Commission while making its award may direct the employer to pay the employees their wages during the strike period.

(ii) In case a strike becomes necessary as a result of the changes sought to be introduced by the employer in the terms and conditions of

employment of his employees and the Commission comes to the conclusion that the change(s) was/were not justified and the strike was justified, the employees will be entitled to wages for the period of strike.

(iii) If the demands in support of which the strike was called are not granted by the Commission and it holds that the strike was unjustified, wages for the period of strike will not be granted.

(iv) If the Commission holds that demands which led to the lock-out were justified and the lock-out was not justified, the Commission in granting the demands may order that the employees should be paid their wages during the period of the lock-out.

(v) If the Commission holds that the demands were not justified and the lock-out was justified the employees will not be entitled to claim wages for the period of the lock-out".

2.21 In this connection, it may be mentioned that no industrial law in India prescribes any payment or withholding of wages during the period of strike or lock-out. The workers' argument in support of their entitlement to wages for the strike period is that they have every right to go on strike to make employers accept their demands and that they would not go on strike but for the employers' resistance to their demands. The employers, on the other hand, are of the view that payment of wages for the strike period would only add to the injury and loss caused to them by a strike. They generally follow the principle of "no work, no pay" and feel that a strike being a deliberate act on the part of the workmen, they should be prepared to face the consequences.

2.22 In India, payment of wages for the strike/lock-out period has been decided by industrial courts and tribunals purely on the basis of equity and social justice. The adjudicators determine the question of justifiability or otherwise of strikes/lock-outs keeping in view the facts and circumstances of each case. The normal practice is that strikes resorted to on frivolous grounds or those launched on extraneous considerations not connected with the betterment of conditions of labour (e.g. strikes on political grounds or sympathetic strikes) are deemed to be unjustified. Justification for a strike, therefore, **prima facie** depends on the fact whether the demands on which the workers go on strike are bonafide and are not influenced by extraneous considerations. The following observations of the supreme court in a case relating to Swadeshi Industries Ltd. V. their workmen (1960, (1) LLJ pp 78-82) are relevant in this connection;

"Collective bargaining for securing improvement on matters like basic pay, dearness allowance, bonus, provident fund, gratuity, leave and holidays is the primary object of a trade union and when demands like these are put forward, and thereafter strike is resorted to in an attempt to induce the company to agree to the demands or at least to open negotiations, the strike must, **prima facie,** be considered justified."

2.23 A few important decisions relating to justifiability or otherwise of strikes/lock-outs as given by the tribunals and the supreme court are listed in Appendix-II. Since in the Paper on IRCs it has been suggested that there is no need to appoint an IRC the question of accepting part (a) of Recommendation No. 188 would not arise. The principles recommended by the National Commission may, however, be brought to the notice of labour courts, tribunals, etc., for information and guidance.

2.24 As regards part (b) of the recommendation relating to dismissal or discharge of a worker and his entitlement to reinstatement with back wages, it may be mentioned that section 33 of the ID Act provides that no employer shall discharge or punish, whether by dismissal or otherwise any workman concerned in a dispute during the pendency of any conciliation proceedings or proceeding before an arbitrator or a labour court or tribunal or national tribunal in respect of an industrial dispute. There is, however, no provision with regard to entitlement to reinstatement with back wages. The recommendation of the Commission in part (b) may be accepted; in the paper on Unfair Labour Practices it has been suggested that an employer's action in dismissing or discharging an employee for taking part in a strike should be considered an unfair labour practice.

(v) **Prohibition of strikes in the case of Government industrial employees.**

2.25 The Commission has recommended:-

"In case of government industrial employees engaged in essential services, the prohibition of strike would be justified. Such prohibition of strike will, however, have to be accompanied by the provision of an effective alternative, or settlement of unresolved disputes. This will ultimately lead to settlement of disputes by negotiations and agreements. All the same, there will be need for a statutory arbitration machinery."

(Recommendation No. 210)

2.26 According to the Commission, the prohibition of strikes in the case of government industrial employees engaged in essential services would be justified, firstly because any interruption in the government's functioning has far-reaching consequences to the community's welfare and security; and secondly because the employer, in this case the government, has no reciprocal right to lock-out in the area of its services/operations. Such prohibition of strikes will, however, have to be accompanied by the provision of an effective alternative for the settlement of unresolved disputes. The Commission has, therefore, suggested the need for statutory arbitration machinery. It also wants the strikes to be made redundant in essential services by providing an alternative method of settling all unresolved disputes. According to the Commission such a provision will ultimately lead to settlement of disputes by negotiation and agreement. (Para 26.28).

2.27 The comments received from the state governments, etc. on the Commission's recommendations reveal that the governments of Tamil Nadu, Mysore and Bihar agree with the views of the Commission. The government of Bihar, however, would agree only when the prohibition of and restrictions on strikes are confined to the essential and public utility services directly run by Government. It also wants a joint consultative machinery, like the Whitley Council, with provision for reference of all unresolved issues to arbitration. The recommendation of the Commission is acceptable also to the ministry of railways. Government of India are already considering a comprehensive legislation to regulate the relations with their employees. The Commission's recommendation would naturally be taken into account while drawing up the legislation.

III—CONCLUSIONS

3.1 The Commission's recommendation (No. 169) that the right to strike may be curtailed in certain essential industries/services, merits acceptance. In fact, the acceptance of this recommendation will not constitute a departure from the existing provisions of the Industrial Disputes Act, which already imposes certain restrictions on strikes in public utility services.

3.2 The Commission's suggestion that the listing of essential industries/services may be left to the Parliament need not be accepted as it may mean avoidable delays; the power to declare certain industries/services as public utility services (i.e. essential in the language of the Commission) as also of adding to the list of such industries/services may continue to rest with the appropriate government.

3.3 The Commission's recommendation (No. 170) regarding a strike ballot may be accepted with the proviso that this should be applicable to all registered unions, whether recognised or not. The Commission's suggestion that every strike/lock-out should be preceded by a notice may also be accepted.

3.4 The question of considering the Commission's recommendation that the proposed IRCs should have powers to decide to order payment or without payment of wages for the strike/lock-out period, would not arise if it was finally decided not to accept the Commission's recommendation for setting up IRCs. The question may, in that case, be left to the judicial authorities to decide, as has been the practice so far. The principles suggested by the Commission may, however, be brought to the notice of the labour courts, industrial tribunals, etc., for information and guidance.

3.5 The Commission's recommendation in part (b) of recommendation No. 188 for treating an employer's action in dismissing or discharging an employee for having taken part in a strike, as an unfair labour practice, may be accepted.

TEXT OF THE RECOMMENTATIONS OF THE NATIONAL COMMISSION ON LABOUR REGARDING RIGHT TO STRIKE/LOCK-OUT.

169 "In certain essential industries/services where a cessation of work may cause harm to the community, the economy or to the security of the nation itself, the right to strike may be curtailed but with the simultaneous provision of an effective alternative, like arbitration or adjudication, to settle the dispute."

Para 23.43) "The democratic ideals of the state prevent it from abridging individual freedom, but its socialist objectives justify the government's regulation of such freedom to harmonise it in a reasonable measure with the interests of the society. What seems called for, therefore, is a reconciliation of these two points of view. While we are not in favour of a ban on the right to strike/lock-out, we are also not in favour of an unrestricted right to direct action. In our view, the right to strike is a democratic right which cannot be taken away from the working class in a constitutional set-up like ours. Even from the practical point of view, we will not favour such a step. Taking away the right of the workers to strike, may only force the discontent to go underground and lead to other forms of protest which may be equally injurious to good labour-management relations. At the same time, there are certain essential industries/services wherein a cessation of work may cause harm to the community, the economy or the security of the nation itself and as such, even this right may justifiably be abridged or restricted, provided, of course, a specific procedure is laid down for remedies and redressal of grievances. Therefore, in such industries, the right to strike may be curtailed but with the simultaneous provision of an effective alternative like arbitration or adjudication to settle disputes. We do not wish to enumerate the industries/services that should be classified as 'essential'; the listing of 'essential' industries should be left to the parliament to decide.*"

184 "In essential industries/services, when collective bargaining fails and when the parties to the dispute do not agree to arbitration, either party shall notify the IRC with a copy to the appropriate government, of the failure of negotiations whereupon the IRC shall adjudicate upon the dispute and its award shall be final and binding upon the parties."

185 "In the case of non-essential industries/services following the failure of negotiations and refusal by the parties to avail of voluntary arbitration, the IRC after the receipt of notice of direct action (but during

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* The observations in this paragraph are the subject matter of a minute of dissent by Shri Vasavada, Shri Ramanujam, Shri Malviya and Shri Ramananda Das.

the notice period) may offer to the parties its good offices for settlement. After the expiry of the notice period, if no settlement is reached, the parties will be free to resort to direct action. If direct action continues for 30 days, it will be incumbent on the IRC to intervene and arrange for settlement of the dispute."

170 "The effects that flow from cessation of work warrant the imposition of certain restrictions on work-stoppages. Every strike/lock-out should be preceded by a notice. A strike notice to be given by a recognised union should be preceded by a strike ballot open to all members of the union concerned and the strike decision must be supported by two-thirds of members present and voting."

186 "When a strike or lock-out commences, the appropriate government may move the Commission to call for the termination of the strike/lock-out on the ground that its continuance may affect the security of the State, national economy or public order and if after hearing the Government and the parties concerned the Commission is so satisfied, it may, for reasons to be recorded, call on the parties to terminate the strike/lock-out and file their statements before it. Thereupon the Commission shall adjudicate on the dispute."

188 "(a) The Commission will have powers to decide to pay or withhold payments for the strike/lock-out period under certain circumstances. (b) If during the pendency of the strike or thereafter, the employer dismisses or discharges an employee because he has taken part in such strike, it would amount to unfair labour practice, and on proof of such practice, the employee will be entitled to reinstatement with back wages."

210 "In case of government industrial employees engaged in essential services, the prohibition of strike would be justified. Such prohibition of strike will, however, have to be accompaned by the provision of an effective alternative for settlement of unresolved disputes. This will ultimately lead to settlement of disputes by negotiations and agreements. All the same, there will be need for a statutory arbitration machinery."

APPENDIX—II

SOME IMPORTANT DECISIONS OF INDUSTRIAL TRIBUNALS/SUPREME COURT.

A—DECISIONS OF TRIBUNALS

(a) **Bharat Airways Ltd., Dum Dum Vs. their workmen.**
(By Industrial Tribunal).

"Strike, of course, has not been outlawed. But this weapon, as all other weapons, must be used with caution. It recoils on the head of the person

who wields, if it is done without sufficient justification. It is the extreme step which the workers can resort to. But even then, unless the employers are guilty of unfair labour practice or victimisation, strike pay cannot be forced out of the hands."

(b) **Bihar Fireworks and Potteries Ltd., V. their workmen.**
(By Labour Appellate Tribunal).

"It must be remembered that workmen, after a long struggle succeeded in establishing that, in proper causes, the weapon of strike is open to them. Whatever may be the value of strike judged by common standards, it has in certain circumstances been recognised as a legitimate weapon of the workmen for purposes of ventilating their demands. It is also a weapon to register a protest and it cannot be said to be justified unless the reasons for it are absolutely perverse and unsustainable. In the present case, the workmen had struck in order to register a protest; this was not unjustified and therefore it would be wrong to deduct wages for the strike period."

(c) **J. K. Cotton Spinning and Weaving Mills, Kanpur and Its workmen**
(By Industrial Tribunal).

"As has been repeatedly held by different conciliation officers, labour officers and Labour Commissioners, there can be no liability of the employer for an illegal strike and the labour is entirely responsible for such illegal strike and naturally must suffer. So long as strike is without legal notice, it is an illegal strike whether provoked by some section of the management or by another event."[1]

(d) **Jyoti Ltd., Baroda V. Its employees**
(By Industrial Tribunal)

"As I have held the strike to be illegal, the question of payment of any wages to the employees for the period of strike... does not survive."[2]

(e) **Govind Sheet Metal Works and Foundry V. their workmen**
(By Industrial Tribunal, Calcutta)

"The workers had gone on illegal and unjustified strike attended with violence in manner and utterance and physical to the extent of blocking the exit from the factory and causing wrongful confinement of the officers and loyal workers. The workers by their own conduct forced the management of the company to close down the factory. Therefore, the workers were not entitled to any wages for the lock-out period."

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[1] Enforced under U.P. Government Order No. 2711(TD)/XVIII-277/T. D. 1948 dated September 24, 1948.

[2] Enforced under Baroda Government Order No. 6/2 dated January 17, 1948.

B—DECISIONS OF THE SUPREME COURT:

(a) **India Marine Service Private Ltd., V. their workmen**
(AIR, 1963, S.C. 528=1963 (I) LLJ-122)

"Where the strike is justified and the lock-out is unjustified, the workmen would be entitled to the entire wages for the period of strike and lock-out".

(b) **Itakhoolie Tea Estate V. Its workmen**
(AIR, 1960 S.C. 1349=1960 II LLJ-95)

"Once it is found that the lock-out was not justified, the Company was bound to pay wages for the period of lock-out. While the illegal lock-out continues, the workmen are not bound to report for work or to take part in any conciliation proceedings to sustain their claims to wages for the lock-out period."

(c) **North Brook Jute Co. Ltd.. and another V. their workmen.**
(AIR SC 879)

"If the employer alters any conditions of service of workmen by rationalisation in contravention of Section 33 of the Act, the wormen are not bound to work under the altered conditions of service. Accordingly if they refuse to do the additional work under a rationalisation scheme which is introduced in contravention of law, and if the employer declared a lock-out in consequence of such refusal, the lock-out will be illegal and the workmen will be entitled to wages for the period of the lock-out."

(d) **Northern Dooars Tea Co. Ltd. V. Workmen Dem Dima Tea Estate/**
(1964 I : LLJ 436)

"Even if the action of the management in declaring and continuing the lock-out over an unduly long period is not **bona fide,** in deciding the quantum of wages to be paid to the workmen for the period of lock-out, the wrong conduct of the workmen in resorting to a long token strike without moving the conciliator for his intervention could not be ignored. In such a case the workmen should be paid wages for the period of lock-out at a reduced rate."

(e) **Chandramalai Estate V. Its workmen**
(AIR 1960 S.C. 902=1960—3 S.C.R. 451)

"It is true that a strike is a legitimate and sometimes an unavoidable weapon in the hands of the labour. At the same time, it is important to remember that an indiscriminate and hasty use of this weapon should not be encouraged. It is not right for labour to think that for any kind of demand a strike can be commended with impunity without exhausting the reasonable avenues for peaceful achievement of their objects. There may be cases where the demand is of such an urgent and serious nature that

it would not be reasonable to expect labour to wait till after it has asked the Government to make a reference, and in such cases, a strike even before such a request has been made may well be justified.

However, the present one was not one of such cases. When the conciliation proceeding failed on 30 November 1955, the union knew that the conciliation officer would make his report to the government. It would have been proper and reasonable for the union to address the government at the same time and make a request for a reference of the dispute to the Industrial Tribunal. There was nothing in the nature of the demands made by the workmen which was of an urgent nature so as to justify the hasty action taken. They might well have waited for some time after the failure of the conciliation efforts before starting a strike and in the meantime they should have asked the government to make a reference. They did not do so, and they decided to go on a strike forthwith even before the government could take its decision to make a reference. Under these circumstances, it must be held that the strike was not justified at all, and therefore the workmen were not entitled to any wages for the strike period. The Tribunal had erred in its view that the strike was partially justified because there is no such thing in law as half or partial justification. In the interests of justice, the Court was bound to set aside the decision of the Tribunal."

The appeal was allowed, and the order of the tribunal directing payment of 50 per cent of total emoluments for the strike period was set aside.

Item 7

UNFAIR LABOUR PRACTICES

I. BACKGROUND

The concept of unfair labour practices has developed as a result of the struggle organised by trade unions in the developed countries of the West to establish the practice of collective bargaining. In particular, the National Labour Relations Act, 1935 (known as the Wagner Act) in the USA sought to remove the hurdles in the way of collective bargaining by defining certain practices, which hindered the conduct of collective bargaining, as 'unfair labour practices'. This was hailed by american workers as their "Magna Charta". In 1947 the Labour-Management Relations Act, 1947 (also known as Taft-Hartley Act) repealed the Wagner Act and made the provisions on unfair labour practices more comprehensive so as to remove the imbalance in the relations between employers and employees. According to this Act, it is an unfair labour practice for an employer—

(i) to interfere with, restrain or coerce employees in the exercise of their rights to organise and to bargain collectively;

(ii) to dominate or interfere with the formation or administration of any labour organisation or contribute financial or other support to it;

(iii) to discriminate regarding hiring or tenure of employment or any term or condition of employment to encourage or discourage membership in any labour organisation (but the unionship is allowed provided certain conditions are satisfied);

(iv) to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under the Act;

(v) to refuse to bargain collectively with the representatives of his employees.

1.2. Likewise, it is an unfair labour practice for a labour organisation or its agents—

(i) to restrain or coerce (a) employees in the exercise of the rights to organise and bargain collectively, or (b) an employer in the selection of his representatives for the purpose of collective bargaining or the adjustment of grievances;

(ii) to cause or attempt to cause an employer to discriminate against an employee or to discriminate against an employee with respect to whom membership in such organisation has been denied or terminated on some ground other than failure to pay his periodic dues etc.;

(iii) to refuse to bargain collectively with an employer, provided he is the representative of his employees;

(iv) (a) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, etc. (b) or to threaten coerce or restrain any person engaged in commerce or in an industry affecting commerce, whether in either case the object is—

(A) forcing or requiring any employer or self employed person to join any labour or employer organisation or to enter into any agreement which is prohibited.

(B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor or manufacturer or to cease doing business with any other person etc.

(C) forcing or requiring an employer to recognise or bargain with a particular labour organisation if another organisation has been certified as the representative union.

(D) forcing or requiring any employer to assign particular work to employees in particular labour organisation.

(v) to cause or attempt to cause an employer to pay or deliver or agree to pay any money or other thing of value, in the nature of an exaction for services which are not performed or not to be performed;

(vi) to picket or cause to be picketed or threaten to picket any employer to force him to recognise or bargain with a particular labour organisation or force the employees to select such organisation as their representative.

1.3. Section 5 of the Australian Commonwealth Conciliation and Arbitration Act enjoins the following on an employer:

5. (1) An employer shall not dismiss an employee, or injure him in his employment, or alter his position to his prejudice, by reason of the circumstances that the employee—

(a) is an officer, delegate or member of an organisation, or of an association that has applied to be registered as an organisation; or

(b) is entitled to the benefit of an industrial agreement or an award; or

(c) has appeared as a witness, or has given any evidence, in a proceeding under this Act; or

(d) being a member of an organisation which is seeking better industrial conditions, is dissatisfied with his conditions; or

(e) has absented himself from work without leave if—

(i) his absence was for purpose of carrying out his duties or exercising his rights as an officer or delegate of an organisation; and

(ii) he applied for leave before he absented himself and leave was unreasonably refused or withheld.

Penalty : £50.

(1A) An employer shall not threaten to dismiss an employee, or to injure him in his employment or to alter his position to his prejudice.

(a) by reason of the circumstance that the employee is, or proposes to become, an officer, delegate or member of an organisation, or of an association that has applied to be registered as an organisation, or that the employee proposes to appear as a witness or to give evidence in a proceeding under this Act; or

(b) with the intent to dissuade or prevent the employee from becoming such officer, delegate or member or from so appearing or giving evidence.

Penalty: £25.

(2) An employee shall not cease work in the service of his employer by reason of the circumstance that the employer—

(a) is an officer, delegate or member of an organisation, or of an association that has applied to be registered as an organisation; or

(b) is entitled to the benefit of an industrial agreement or an award; or

(c) has appeared as a witness, or has given any evidence, in a proceeding under the Act.

Penalty : £50.

1.4. In a number of other countries such as Argentina, Canada, Ethiopia, Ghana, Japan and Phillipines provisions for dealing with unfair labour practices and collective bargaining have been made, more or less on the lines indicated by the provisions of the US laws.

1.5. Before India achieved independence, there were three important pieces of central legislation. The first is the Trade Unions Act, 1926, which provides for registration of unions and offers them protection such as immunity for its members and officers from criminal conspiracy proceedings and from civil suits arising out of trade disputes. The second is the Industrial employment (Standing Orders) Act, 1946, which requires certain industrial establishment to have a set of standing orders, defining conditions of employment. These include matters such as classification of workmen, shift schedules, attendance rules, leave and holidays, discipline and action for misconduct, termination, grievance procedure and age of retirement. The third Act is the Industrial Disputes Act, 1947 which provides, at present, for the settlement of industrial disputes through conciliation, arbitration and adjudication. Adjudication is thus the ultimate legal remedy for the settlement of an unresolved disputes. There is no central law for recognition of trade unions.

1.6. The Bombay Industrial Relations Act, 1946, which was then applicable in Bombay, provided, for the first time, some conditions to be incorporated in the rules of a union if it desired to be registered as an approved union. These conditions could be considered as setting out some

unfair labour practices which an approved union was expected to avoid. These are:—

(i) No strike shall be sanctioned or resorted to or supported by a union unless all the methods provided for under the Act have been exhausted or unless certain conditions are satisfied and the majority of its members vote by ballot in favour of such strike.

(ii) No stoppage which is illegal under the Act shall be sanctioned, resorted to or supported by it.

(iii) No 'go-slow' shall be sanctioned, resorted to or supported by it.

(iv) Every industrial dispute in which a settlement is not reached by conciliation shall be offered to be submitted to arbitration and arbitration shall not be refused by it in any dispute.

1.7. Section 101 of the B.I.R. Act imposes penalties for certain acts which could be deemed to be unfair labour practices on the part of employers. These provisions are :—

(i) No employers shall dismiss, discharge or reduce any employee or punish him in any other manner by reason of the circumstances that the employee—

(a) is an officer or a member of a registered union or a union which has applied for being registered under the Act; or

(b) is entitled to the benefit of a registered agreement or a settlement, submission or award; or

(c) has appeared or intends to appear as a witness in, or has given evidence or intends to give evidence in a proceeding under the Act or any other law for the time being in force or takes part in any capacity in, or in connection with a proceeding under the Act; or

(d) is an officer or a member of an organisation the object of which is to secure better industrial conditions; or

(e) is an officer or a member of an organisation, which is not declared unlawful; or

(f) is a representative of employees; or

(g) has gone on or joined or instigated a strike which has not been held by the labour court or the industrial court to be illegal under the provisions of the Act.

(ii) No employer shall prevent any employee from returning to work after a strike, arising out of an industrial dispute, which has not been held by the labour court or the industrial court to be illegal unless—

(a) the employer has offered to refer the disputed issues to arbitration and the employee has refused arbitration;

(b) the employee, not having refused arbitration, has failed to offer to resume work within one month of a declaration by the state government that the strike has ended.

(iii) No employer shall dismiss, discharge or reduce any protected employee save with the express permission in writing of the Labour Court. (A

'protected employee' is one who being an office bearer of a union connected with the industry, is recognised as such in accordance with the rules made under the Act).

1.8. Thus, the BIR Act sought to bring in the concept of unfair labour practices indirectly by providing penalties for certain acts of omission and commission on the part of employers and workers.

1.9. Soon after independence, government reviewed the working of the Industrial Disputes Act, 1947 and the Trade Unions Act and thought of making adequate provisions regarding unfair labour practices in a central law. Hence, the Trade Unions Act was amended by the Trade Unions (Amendment) Act, of 1947. The Amendment Act of 1947, which drew on the American labour law on the subject in certain respects, gave the unions basic protection against certain types of employer-practices. It also prevented the unions from indulging in certain types of activities. Both types of activities were for the first time termed in the law as 'unfair practices'. The details of the unfair labour practices both on the part of employers and trade unions, as provided in the Amendment Act, are given at Appendix-1. The Act was, however, not enforced.

1.10. The decision not to put the Amendment Act of 1947 into effect did not mean final rejection by government of the ideas incorporated in the Act. By 1950, two new Bills were drafted, namely, the Labour Relations Bill and the Trade Unions Bill. These were designed as comprehensive pieces of legislation to replace the existing laws relating to industrial relations. They purported to reinstitute the provisions of the 1947 Amendment Act for compulsory recognition of unions and basic protection against unfair practices. According to the Bills, all agreements had to provide for final settlement, without work stoppages, by arbitration or otherwise of all questions arising under such agreements. The prevailing provisions for conciliation of disputes and for their reference to tribunals for adjudication were retained. The approach indicated in these provisions represented a complete break from the past. The draft Bills were referred to a select committee, which after studying them, reported them back to parliament in December 1950, recommending their passage. Further action was not taken, however, and the bills eventually lapsed.

1.11. Government, however, did not give up their responsibility to protect industrial workers and to fix their important conditions of employment and, in the process, to maintain industrial peace by preventing strikes and adjudicating disputes. In 1958, it was decided to pursue the objective of industrial peace by non-legislative means. The new approach was to re-shape industrial relations by securing from the parties mutual agreement on and voluntary compliance with a set of principles and rules, the observance of which, it was believed, would produce orderly and effective labour relations. The third five-year plan also emphasised the voluntary and moral basis of this approach. According to the Plan docu-

ment "a new approach was introduced to give a more positive orientation to industrial relations, based on moral rather than legal sanctions". At the 16th Session of the Indian Labour Conference held in May 1958, the participants adopted a voluntary code of discipline which prescribes certain do's and don'ts for the employers and workers. The code of discipline prohibits interference with the right of employees to enrol or continue as union members, discrimination, restraint or coercion against any employee because of recognised activity of trade unions, and victimisation of any employee and abuse of authority in any form by the managements. On the part of the unions negligence of duty, careless operation, damage to property, interference with or disturbance to normal work and insubordination have been termed as unfair labour practices, The code, thus, sought to provide for unfair labour practices on a voluntary basis.

1.12. Of late 'gherao' is being resorted to by workers in some cases to force the managements to concede their demands. A section of the trade unionists claim that 'gherao' as a working class weapon is not a new phenomenon. The Standing Labour Committee at its 26th session held in May 1967considered the problem of industrial unrest created by 'gherao'. The committee disapproved all coercive and intimidatory tactics, including "gherao' (wrongful confinement), for resolving industrial disputes.

1.13. The Study Group on Industrial Relations (Eastern Region) set up by the National Commission on Labour which examined this problem came to a majority conclusion, one member dissenting, that 'gheraos' apart form their adverse effects on industry and economy of the country, strike at the very root of trade unionism.The experience during the past 2-3 years would seem to show that the weapon of 'gherao' used by the trade unionist has neither helped the trade union movement nor the industry.

1.14. The National Commission on Labour has gone into the whole question and recommended that statutory provision should be made to enumerate the various unfair labour practices on the part of both employers' and workers' unions and provide for suitable penalties against such practices. In the view of the Commission, labour courts should be the appropriate authority to deal with complaints of unfair labour practices; labour courts should be empowered to impose suitable punishment/ penalties, including de-recognition, in case of an erring union and heavy fine in the case of an employer.

1.15. At the Labour Ministers' Conference and the Indian Labour Conference held in November 1969, where the recommendations of the National Commission on Labour were discussed, no particular views were expressed on the subject of 'unfair labour practices'. The All India Trade Union Congress in its publication giving its comments on the report of the National Commission has pointed out that, in reality, the fiction of legal equality between the employer and the union does not operate.

While unfair labour practices on the part of employers (in the model suggested by the Commission) consists of practices which are almost impossible to prove and, in any case, are mostly covered by the present legal interpretation of victimisation, on the part of the workers they seek to put still more curbs on the right to strike and other forms of action and protest. Thus, a union could be penalised if the strike is in alleged contravention of its own rules.

II. Recommendation of the National Commission on Labour.

2.1. The only recommendation of the Commission on the subject of unfair labour practices is as under :—

"Unfair labour practices on the part of both employers' and workers' unions should be detailed and suitable penalties prescribed in the industrial relations law for those found guilty of committing such practices. Labour courts will be the appropriate authority to deal with complaints relating to unfair labour practices." [Recommendation No. 194]

2.2. The Commission has not defined the 'unfair labour practices'. It has referred to the Committee on Unfair Labour Practices, appointed by the Government of Maharashtra, which submitted its report to the state government in July, 1969. In the Commission's view, the various acts of unfair labour practices listed by the committee could form a suitable basis for the purpose of defining unfair labour practices. The list of unfair labour practices (as at Appendix-II) drawn up by the committee takes note of the practices referred to in the preceding paragraphs. It is fairly exhaustive and can be considered for adoption.

2.3. The Commission has also recommended:

"....(b) If during the pendency of the strike or thereafter, the employer dismisses or discharges an employee because he has taken part in such strike, it would amount to unfair labour practice, and on proof of such practice, the employee will be entitled to reinstatement with back wages". [Recommendation No. 188]

2.4. The recommendation of the Commission for treating an employer's action, mentioned above, as an unfair labour practice may also be accepted; it may be incorporated in the list of unfair labour practices at Appendix-II.

III. CONCLUSIONS

3.1. On the basis of what has been mentioned in the foregoing paragraphs, the following suggestions are for consideration :—

(i) Unfair labour practices both on the part of employers and unions may be specified in a central law and suitable penalties against such practices should be prescribed.

(ii) The list of unfair labour practices (Appendix-II), as well as the one mentioned in recommendation No. 188(b), may be suitably incorporated in law.

(iii) Labour courts may be given the authority to enforce the statutory provision in this regard and also award penalties such a derecognition of a union, etc.

APPENDIX—I

TRADE UNIONS (AMENDMENT) ACT, 1947
UNFAIR LABOUR PRACTICES

1. **On the part of employers**

(a) to interfere with, restrain, or coerce his workmen in the exercise of their rights to organise, form, join or assist a trade union and to engage in concerted activities for the purpose of mutual aid or protection;

(b) to interfere with the formation or administration of any trade union or to contribute financial or other support to it;

(c) to discharge, or otherwise discriminate against any officer of a recognised trade union because of his being such officer;

(d) to discharge or otherwise discriminate against any workmen because he has made allegations or given evidence in an enquiry or proceedings relating to matters such as referred to in sub-section (i) of Section 28-F*;

(e) to fail to comply with the provisions of Section 28-F;

Provided that the refusal of an employer to permit his workmen to engage in trade union activities during their hours of work shall not be deemed to be an unfair labour practice on his part.

2. **On the part of Trade Unions**

(a) for a majority of the members of the trade unions to take part in an illegal strike;

(b) for the executive of the trade union to advise or actively to support or to instigate an irregular strike;

(c) for an officer of the trade union to submit any return required by or under the Act containing false statements.

APPENDIX-II

REPORT OF THE COMMITTEE ON UNFAIR LABOUR PRACTICES, GOVERNMENT OF MAHARASHTRA
UNFAIR LABOUR PRACTICES

1. **On the Part of the Employers**

(1) To interfere with, restrain or coerce employees in the exercise of their right to organise, form, join or assist a trade union and to engage

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* Section 28-F enumerates the rights of recognised unions.

in concerted activities for the purpose of mutual aid or protection, that is to say—

(a) threatening employees with discharge or dismissal, if they join a union;

(b) threatening a lock-out or closure, if a union should be organised;

(c) granting wage increase at crucial periods of union organisation with a view to undermining the efforts of organisation.

(2) To dominate, interference with, or contribute support-financial or otherwise—to any union, that is to say:

(a) an employer taking an active interest in organising a union of his employees; and

(b) an employer showing partiality or granting favour to one of several unions attempting to organise or to its members.

NOTE: This will not affect right and facilities, if any (arising out of the fact of recognition) of recognised unions.

(3) To be establish employer-sponsored unions.

(4) To encourage or discourage membership in any union by discriminating against any employee, that is to say:

(a) discharging or punishing an employee because he urged other employees to join or organise a union;

(b) refusing to reinstate an employee because he took part in a lawful strike;

(c) changing seniority rating because of union activities;

(d) refusing to promote employees to higher posts on account of their union activities;

(e) giving unmerited promotions to certain employees, with a view to sow discord amongst the other employees or to undermine the strength of their union.

(f) discharging office-bearers or active union members, on account of their union activities.

(5) To discharge or discriminate against any employee for filing charges or testifying against an employer in any enquiry or proceedings relating to any industrial disputes.

(6) To refuse to bargain collectively in good faith with the union certified as a collective bargaining agent.

(7) To coerce employees through administrative measures, with a view to secure their agreements to voluntary retirements.

II.—**On the part of the Trade Unions**

(1) For the union to advise or actively support or to instigate an irregular strike or to participate in such strike.

NOTE: 'An irregular strike means an illegal strike and includes a strike declared by a trade union in violation of the rules or in contravention of its conditions of recognition or in breach of the terms of a subsisting agreement, settlement or award.

(2) To coerce workers in the exercise of their right to self-organisation or to join unions or refrain from joining any union, that is to say :

(a) for a union or its members to picket in such a manner that non-striking workers are physically debarred from entering the work place;

(b) to indulge in acts of force or violence or to hold out threats of intimidation, in connection with a strike against non-striking workers or against managerial staff.

(3) To refuse to bargain collectively in good faith with the employer.

(4) To indulge in coercive activities against certification of a bargaining representative.

(5) To stage, encourage or instigate such forms of coercive actions as wilful 'go-slow' or squatting on the work premises after working hours or "gherao" of any of the members of the managerial staff.

(6) To stage demonstrations at the residence of the employers or the managerial staff members.

III.—**General Unfair Labour Practices.**

(1) To discharge or dismiss employees—

(a) by way of victimisation;

(b) not in good faith but in the colourable exercise of the employers' rights;

(c) by falsely implicating an employee in a criminal case on false evidence or on concocted evidence;

(d) for patently false reasons;

(e) on untrue or trumped up allegations of absence without leave;

(f) in utter disregard of the principles of natural justice in the conduct of domestic enquiry or with undue haste;

(g) for misconduct of a minor or technical character, without having any regard to nature of the particular misconduct or the past record of the service of the employees, so as to amount to shockingly disproportionate punishment;

(h) to avoid payment of statutory dues.

(2) To abolish the work being done by the employees and to give such work to contractors as a measure of breaking a strike.

(3) To transfer an employee malafide from one place to another under the guise of following management policy.

(4) To insist upon individual employees, who were on legal strike, to sign a good conduct bond as a pre-condition to allowing them to resume work.

(5) To show favouritism or partiality to one set of workers, regardless of merit.

(6) To employ employees as "badlis", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workers.

(7) To encroach upon contractual, statutory, or legal rights of the other party, by either party.

NOTE: The word "employee" used in the List No. III above does not include an employee whose duties are essentially managerial.

Item 8:

SYSTEM OF WAGE BOARDS

The following points are suggested for consideration:

(i) The system of wage boards may continue as recommended by the Commission. However, wage boards may, in future, be constituted on a selective basis for industries of a homogenous nature like cement, sugar, textiles, etc., and only if there is demand from both the employers' and workers' organisations in the industry concerned and there is agreement to abide by the recommendations of the wage board. When a wage board at a central level is not feasible either because of lack of homogeneity in the industry or for lack of consent by the parties on an all-India basis, the possibility of setting up wage boards for such industries may be considered at the state level or if the concerned states agree, at zonal level, in respect of industries in which the appropriate government is the state government.

(ii) The terms of reference of a wage board should also provide that the board would go into the question of linking wages to productivity and payment by results and make specific recommendations therefor.

(iii) There should not be any independent members on the wage boards to be set up in future. However, assessors may be associated with the wage boards, as recommended by the commission, wherever necessary.

(iv) The chairman of a wage board may be selected from an agreed panel of names prepared, in advance, and maintained by the government. This panel should be drawn with the consent of the employees' and workers' representatives.

(v) The chairman of a wage board need not necessarily be a person from the judiciary as suggested by the Commission's committee; other eminent persons also, if they are found to be suitable for the post, may be considered for the purpose.

(vi) Where the chairman is appointed with the common consent of the parties, his decisions should have the status of arbitration, as recommended by the Commission in case no decision is reached by a wage board.

(vii) No chairman may be allowed to take up the work of more than two wage boards at a time.

(viii) Wage boards should, as far as possible, submit their recommendations within a period of one year from the date of their appointment. However, in the case of industries of a complex nature, government may extend this time limit further.

(ix) In view of the difficulties pointed out in para 2.27 about statutory enforcement of the recommendations of a wage board, the existing arrangements may continue.*

(x) Government should, as a general rule, accept the unanimous recommendations of a wage board; but, in a situation involving public interest, government may modify these recommendations.

(xi) Wage boards should, in their recommendations, indicate clearly the date from which their recommendations will take effect; their recommendations should normally remain in force for a period of five years.

(xii) A central wage division may be set up in the department of Labour and Employment to provide secretarial assistance to the different wage boards, as well as the committees appointed under the minimum wages act at the centre. This division should be well-equipped with staff as well as other material—both statistical and other information. The division may draw up a manual of procedure for the guidance of future wage boards. Such wage cells may be set up by the state government also to service the wage boards/committees appointed by them.

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* Para 2.27 It would be seen that the consensus favours the statutory enforcement of unanimous recommendations of wage boards. There are, however, practical difficulties in giving effect to it. Firstly, once it is known, in advance, that unanimous recommendations of a wage board would be compulsorily enforced, the representatives of employers or workers on the board may be encouraged to avoid any unanimous decision being taken; naturally they would like to reserve their views in the matter for a later stage. A unanimous award would then become rather rare. Secondly, even if such a legal provision is made there is a likelihood that an award of a wage board, once made statutory would become justiciable and any unit of the industry concerned may then approach a court for quashing the award on the ground that its paying capacity was not judged by the wage board, in giving its award. The Court may then quash the entire award as arbitrary. The reference made by the Commission's committee about the enforcement of the recommendations of some wage boards under Section 3 of the UP Industrial Disputes Act does not appear to be of much help either. Section 3 (b) of this act provides that the state government will have power to require employers, workmen or both to observe for such periods, as may be specified in the order, such terms and conditions of employment as may be determined in accordance with the order under this section, the state government may order that the wages fixed in an award of a wage board form the terms and conditions of employment and hence may require the employer to observe them. But here again, the matter would be open to review by a court and the possibility of such an order being quashed cannot be ruled out. Howsoever deficient the present arrangement is, this seems to be the only possible course.

RECOMMENDATIONS OF THE NATIONAL COMMISSION ON LABOUR CONCERNING WAGE BOARDS

119. (a) Wage Boards have done some useful work and they should continue.

(b) They have attempted fixation of wages within the broad framework of the government's economic and social policy.

120. There need be no independent persons on the wage board. If considered necessary, an economist could be associated with the board, but only as an assessor.

121. (a) The chairman of the wage board should be appointed by common consent of the parties, wherever possible.

(b) For appointment of chairman of wage boards, an agreed panel of names should be maintained by the proposed national/state industrial relations commissions.

(c) He should preferably be drawn from the members of the proposed national or state industrial relations commissions.

(d) In case a chairman is appointed by the consent of both the parties, he should arbitrate if no agreement is reached in the wage board.

(e) Where the commission is unable to prepare panel of agreed names, government will appoint the chairman.

(f) A person should not be appointed as chairman of more than two wage boards at a time.

122. The wage boards should normally be required to submit their recommendations within one year of their appointment. The date from which the recommendations should take effect should be mentioned in the recommendations itself. The recommendations of a wage board should remain in force for a period of five years.

123. (a) A central wage board division should be set up in the Union Ministry for Labour and Employment on a permanent basis to service all wage boards.

(b) This division should lend the necessary staff to the wage boards and also supply statistical and other information needed by them for expeditious disposal of the work.

Para 19.26(v): Unanimous recommendations of the wage board should be statutorily binding.

Para 19.26(vii): A manual of procedure for wage boards should be prepared.

TIME TAKEN BY WAGE BOARDS IN THE SUBMISSION OF FINAL REPORTS

Serial No.	Industry for which wage board was constituted	Date of appointment	Date of submission of final report	Time taken by the boards	
				Years	Months
1.	Cotton Textiles	30.3.1957	1.12.1959	2	8
2.	Sugar	26.12.1957	28.11.1960	2	11
3.	Cement	2.4.1958	7.10.1959	1	6
4.	Jute	25.8.1960	4.9.1963	3	0
5.	Tea Plantations	5.12.1960	31.5.1966	5	6
6.	Rubber Plantations	7.7.1961	12.8.1966	5	1
7.	Coffee Plantations	7.7.1961	6.8.1965	4	1
8.	Iron and Steel	5.1.1962	21.2.1965	3	1
9.	Iron Ore Mining	3.5.1963	21.2.1967	3	9
10.	Limestone and Dolomite Mining	3.5.1963	21.2.1967	3	9
11.	Coal Mining	10.8.1962	13.2.1967	4	6
12.	Working Journalists	12.11.1963	17.7 1967	3	8
13.	Non-Journalists	25.2.1964	17.7.1967	3	5
14.	Cotton Textiles (Second)	12.8.1964	31.12.1968	4	4
15.	Cement (Second)	2.9.1964	14.8.1967	2	11
16.	Ports and Docks	13.11.1964	27.11.1969	5	—
17.	Engineering	12.12.1964	3.1.1969	4	1
18.	Heavy Chemicals and Fertilisers	3.4.1965	29.8.1968	3	5
19.	Sugar (Second)	16.11.1965	18.2.1970	4	3
20.	Leather and Leather Goods	21.3.1966	14.8.1969	3	5
21.	Electricity Undertakings	28.5.1966	12.12.1969	3	6
22.	Road Transport	28.5.1966	19.11.1969	3	6

Standing Labour Committee's Main Conclusions

ITEM 1: ACTION TAKEN ON THE MAIN CONCLUSIONS OF THE 28TH SESSION OF THE STANDING LABOUR COMMITTEE HELD AT NEW DELHI ON JULY 18, 1968.

The position stated in the Memorandum was noted.

ITEM 2: INDUSTRIAL RELATIONS COMMISSIONS AND LABOUR COURTS

(A) **Industrial Relations Commissions:**

(i) Depending on the workload there shall be one or more Industrial Relations Commissions, both at the Centre and in the States, each to be presided over by a Judicial Officer, who will be appointed by the appropriate Government, in consultation with the Chief Justice of India or the Chief Justice of the High Court, as the case may be, and the UPSC or the State Public Service Commissions. In addition, each Industrial Relations Commission will also have two non-judicial members who will not be officials of the Government, but who will be well-versed in problems relating to industry, labour or management. These non-judicial members will also be appointed in the same manner as the Chairman. After appointment, the non-judicial members will sever all connections, if any, with their interest and will function as independent members and on a full time basis.

(ii) The Industrial Relations Commission will be entrusted with the functions of:

(a) certification of representative unions,

(b) adjudication of industrial disputes referred to it.

(c) disposal of matters relating to intra-union rivalry and unfair practices,

and such other functions as may be assigned to it.

(iii) The appropriate Government shall continue to have the same powers in respect of conciliation as at present under the Industrial Disputes Act.

(iv) Unanimous and majority recommendation of the Industrial Relations Commission will be binding on all the parties. Where, however, no two members agree, the decision of the Chairman will prevail.

(v) In non-essential industries and services, labour (i.e., the recognised

union) shall have the right of choice between strike and adjudication in respect of demands raised by it, and the management shall have the right of choice between lockout and adjudication in respect of demands raised by them; but it shall always be competent for the appropriate Government to intervene at any stage in the dispute and refer the matter in dispute for adjudication to the Industrial Relations Commission and prohibit the commencement or continuation of strikes or lockouts. In essential industries and services, following the failure of negotiations and conciliation, it shall be open to either party, as also to the appropriate Government, to refer all matters in dispute for adjudication by the Industrial Relations Commission.

(vi) Provision is to be made in law for the disposal of adjudication references ordinarily within a period of six months; if, however, the time limit is to be exceeded, the reasons therefor shall be recorded in writing by the Industrial Relations Commission.

(B) **Labour Courts:**

(i) Labour Courts may be appointed in each State to deal with interpretation and implementation of awards, claims arising out of rights and obligations under the Labour laws and agreements, cases of discharge or dismissal of workmen and such other matters as may be assigned to these Courts.

(ii) Members of the Labour Courts will be appointed by the appropriate Government in consultation with the Hgih Court concerned. The strength and the location of the Labour Courts may be decided by the appropriate Government.

(iii) Labour Courts would be given appropriate powers to execute their decisions and impose penalties.

(iv) Employers and recognised unions, in common with the appropriate Government, will have the right to approach a Labour Court for decision with regard to any matter in dispute.

(v) Provision will be made in law for disposal of cases by the Labour Courts ordinarily within a period of six months. If, however, the time-limit is to be exceeded, the reasons therefor shall be recorded in writing by the Labour Court.

ITEM 3: RECOGNITION OF UNIONS

(a) **Recognition of Union:**

(i) Statutory provisions shall be made in a Central Law for recognition of a representative union;

(ii) There shall be only one representative union, certified by the In-

dustrial Relations Commission, for an industry in a local area or for an industrial plant/unit, as may be decided by the Industrial Relations Commission;

(iii) Applications for recognition as a representative union shall be decided only by the Chairman of the Industrial Relations Commisison;

(iv) Claims for such recognition shall be decided on the basis of paid membership.

The representative of HMS was of the view that the method to be followed for determining the relative strength of rival claimants for recognition i.e. whether by verification of membership or by holding a secret ballot of all employees, should be left for the decision of the Industrial Relations Commission in each case.

(v) Membership of unions claiming recognition shall be determined by verification of records; paid membership for 3 months during a period of six months immediately preceding the date of reckoning would ordinarily be the basic criterion for determining membership. However, where the provision in the constitution of a union permits collection of membership fees on annual or quarterly basis, the criterion for determining membership may be in accordance with the constitution of such a union.

(b) **Conditions for Recognition**

For eligibility to recognition, a union should satisfy the following conditions:-

(i) It should be registered under the Trade Unions Act and should have completed one year after such registration.

(ii) It should not have been found responsible for any unfair practice, as determined by the Industrial Relations Commission, during the period of 12 months preceding the date of preferring the claim for recognition.

(iii) The membership of the union should be open to all categories of employees of the plant/unit or the industry, as the case may be. (In the case of an industrial union, its rules should provide for the setting up of sub-committees for important crafts/occupations to deal with their problems).

(iv) It should have a membership of not less than 30% of the employees for recognition in any plant/unit and 25% for recognition in an industry in a local area.

(c) **Rights of recognised Unions:**

(i) The rights and obligations of a recognised union shall be as in the **Annexure I.**

(ii) A recognised union will enjoy the privilege of recognition for at least two years and also thereafter unless its representative character is successfully challenged before the Industrial Relations Commission after the aforesaid period of two years, or the union is, otherwise, derecognised at any time.

(iii) An agreement entered into by a management with the recognised union shall be binding on the management and all the employees of the industrial plant/unit or industry as the case may be.

(d) **Rights of unrecognised unions:**

Unrecognised unions will have the right to represent cases of individual workman regarding dismissal or discharge before a Labour Court.

(e) **Grounds on which a Union can be derecognised:**

A recognised union would be liable to be derecognised if—

(i) it ceases to be a registered union;

(ii) it is found responsible for unfair practices as determined by the Industrial Relations Commission;

(iii) on the claim of a rival union, after two years of its recognition, it is found, on verification of membership by the Industrial Relations Commission, that the Union has lost its representative status.

ITEM 4: TRADE UNIONS, INCLUDING PROCEDURE FOR REGISTRATION AND OTHER MATTERS

(i) All unions should get themselves registered under the Trade Unions Act. The minimum number of members required for registration of a union should be raised to 10%, subject to a minimum of seven, of the employees of a plant or 100, whichever is lower. The basis of employment, for determining the above percentage, would be the average employment of the plant during the calendar year, preceding the year of application for registration, provided that, in the case of seasonal industries, the percentage will be determined with reference to the average employment during the season immediately preceding the date of application for registration.

(ii) The Registrar of Trade Unions should complete all preliminaries regarding grant/refusal of registration within 30 days from the receipt of an application, excluding the time which a union takes in answering his queries. The Registrar may be instructed, through departmental orders, to specify and intimate to the applicant all defects and mistakes in an application for registration as soon as possible after the receipt of the application.

(iii) Registration of a union may be cancelled if—

(a) the annual return discloses that its membership has fallen below the minimum prescribed for recognition or if, on a complaint by a rival union, the membership of the registered union concerned is, on verification, found to have fallen below the prescribed minimum;

(b) the union fails to submit its annual return wilfully or otherwise within the prescribed period;

(c) the annual return submitted by it is defective in material particulars and these defects are not rectified within the prescribed period; and

(d) for contravention of any of the conditions laid down for registration.

(iv) An appeal shall lie to the Industrial Relations Commission against the Registrar's orders of refusal or cancellation of registration.

(v) Provision may be made in law for regulating applications for re-registration of unions; such applications for re-registration may not be entertained within six months of the date of the cancellation of registration.

(vi) The minimum monthly membership fee of a union should be Rupee one for the organised sector, 50 paise for the unorganised sector, and 25 paise for agricultural, farm and forest labour.

(vii) The question of reduction in the number of "outsiders" on the executives of unions should be decided by the unions themselves within the limits set by the existing law.

(viii) The Central workers' organisations should normally settle intra-union disputes, if any, in their constituent unions; but where a Central organisation is unable to resolve such a dispute within a period of two months, the matter may be referred to the Industrial Relations Commission for a decision.

ITEM 5: DEFINITION OF THE TERMS 'INDUSTRY' AND 'WORKMAN'

(i) It was generally accepted that there was need to extent the protection on the lines of the Industrial Disputes Act to services like hospitals and educational institutions, etc.

(ii) On the question of definition of 'Industry', it was urged by some representatives that the existing Industrial Disputes Act should be amended specifically to cover hospitals and educational institutions. Some others, however, urged that separate legislation be introduced for these services. It was finally agreed that Government should take a decision on the basis of these two alternative suggestions.

(iii) On the question of the definition of 'Workman', it was urged on behalf of the workers that the wage limit should be raised to Rs. 1600/-.

This was not, however, acceptable to the employers' representatives who urged for a ceiling of Rs. 1000/- and also that technical staff drawing more than the ceiling should be excluded. The question of evolving a suitable definition of 'workman' was also left to the Government for decision.

(iv) It was agreed that persons entrusted with managerial or administrative functions and responsibilities and those employed in Defence and Police services should be excluded from the definition of the term 'workman'.

ITEM 6: RIGHT TO STRIKE/LOCKOUT

(i) It was agreed that the right to strike could be subject to certain restrictions in essential industries/services, provided there was simultaneous provision for an effective alternative, like arbitration or adjudication, to settle disputes.

(ii) On behalf of HMS, it was urged that the Central legislation should clearly specify the essential services/industries. It was, however, pointed out that it was not possible to list out all essential industries/services for legislation, and it would be necessary to empower the appropriate Government to add to, or delete items from, the list of such essential services/industries.

(iii) It was agreed that there should be a ballot amongst the members of a union before strike action was resorted to. The HMS representative however, was opposed to any such strike ballot.

(iv) A notice should precede every strike/lockout.

ITEM 7: UNFAIR LABOUR PRACTICES

(i) It was agreed that the term 'unfair labour practices' should be replaced by the term 'unfair practices' and that unfair practices listed in **Annexure II** could be suitably incorporated in a Central law giving reserved powers to Government to add to or delete from the list.

(ii) Matters relating to unfair practices should be decided by the Industrial Relations Commission.

ITEM 8: SYSTEM OF WAGE BOARDS

The proposals listed in the Memorandum (**Annexure III**) were generally accepted. In respect of the proposal at (ix), however, it was urged that the recommendations of the Wage Boards should be made statutorily enforceable, if possible, on the lines of the provision contained in Section 3 of the U. P. Industrial Disputes Act.

ITEM 9: FAMILY PENSION CUM-LIFE ASSURANCE SCHEME FOR INDUSTRIAL WORKERS

It was agreed that the Employees' Provident Funds Act should be appropriately amended so as to implement the scheme. It was, however, urged by the workers' representatives that the scheme should be made applicable also to:

(a) those who were paying contribution @ 6¼% under the Employees' Provident Funds Act; and

(b) members of the Coal Mines Provident Fund, as they were already paying contribution @ 8%.

ITEM 10: WORKERS IN HOSPITALS AND DISPENSARIES—APPLICABILITY OF INDUSTRIAL DISPUTES ACT, 1947

This item is already covered by the Conclusion under item 5.

ITEM 11: PROPOSALS FOR SETTING UP A NATIONAL LABOUR INSTITUTE AT DELHI

The proposal to set up a National Labour Institute at Delhi was agreed to.

ITEM 12: REPORT OF TRIPARTITE COMMITTEE ON LEGISLATION FOR FILM INDUSTRY WORKERS

The proposals contained in the Report of the Tripartite Committee on legislation for Film Industry Workers were approved.

ANNEXURE-I

RIGHTS OF RECOGNISED UNIONS

(i) to raise issues and enter into collective agreements with employers on general questions concerning the terms of employment and conditions of service of workers in an establishment or, in the case of a representative union, in an industry in a local area;

(ii) to collect membership fees/subscriptions payable by members to the union within the premises of the undertaking; or demand check-off facility;

(iii) to put up or cause to be put up a notice board on the premises of the undertaking in which its members are employed, and affix or cause to be affixed thereon, potices relating to meetings, statements of accounts of its income and expenditure and other announcements which are not abusive, indecent, inflamatory or subversive of discipline;

(iv) to hold discussions with the representatives of employees who are the members of the union at a suitable place or places within the premises of office/factory/establishment as mutually agreed upon;

(v) to meet and discuss with an employer or any person appointed by him for the purpose, the grievances of its members employed in the undertaking;

(vi) to inspect, by prior arrangement, in an undertaking, any place where any member of the union is employed;

(vii) to nominate its representatives on the grievance committee constituted under the grievance procedure in an establishment;

(viii) to nominate its representatives on statutory or non-statutory bipartite committees, e.g., works committees, production committees, welfare committees, canteen committees, and house allotment committees.

ANNEXURE-II

REPORT OF THE COMMITTEE ON UNFAIR LABOUR PRACTICES, GOVERNMENT OF MAHARASHTRA

UNFAIR LABOUR PRACTICES

1. On the part of the Employers

(1) To interfere with, restrain or coerce employees in the exercise of their right to organise, form, join or assist a trade union and to engage in concerted activities for the purpose of mutual aid or protection, that is to say—

(a) threatening employees with discharge or dismissal, if they join a union;

(b) threatening a lock-out or closure, if a union should be organised;

(c) granting wage increase at crucial periods of union organisation with a view to undermining the efforts of organisation.

(2) To dominate, interfere with, or contribute support—financial or otherwise—to any union, that is to say:

(a) an employer taking an active interest in organising a union of his employees; and

(b) an employer showing partiality or granting favour to one of several union attempting to organise or to its members.

NOTE: This will not affect rights and facilities, if any, (arising out of the fact of recognition) of recognised unions.

(3) To establish employer-sponsored unions.

(4) To encourage or discourage membership in any union by discriminating against any employee, that is to say:

(a) discharging or punishing an employee because he urged other employees to join or organise a union;

(b) refusing to reinstate an employee because he took part in a lawful strike;

(c) changing seniority rating because of union activities;

(d) refusing to promote employees to higher posts on account of their union activities;

(e) giving unmerited promotions to certain employees, with a view to sow discord amongst the other employees or to undermine the strength of their union;

(f) discharging office-bearers or active union members, on account of their union activities.

(5) To discharge or discriminate against any employee for filing charges or testifying against an employer in any enquiry or proceedings relating to any industrial dispute.

(6) To refuse to bargain collectively in good faith with the union certified as a collective bargaining agent.

(7) To coerce employees through administrative measures, with a view to secure their agreements to voluntary retirements.

II **On the Part of the Trade Unions**

(1) For the union to advise or actively support or to instigate an irregular strike or to participate in such strike.

NOTE: 'An irregular strike' means an illegal strike and includes a strike declared by a trade union in violation of the rules or in contravention of its conditions of recognition or in breach of the terms of a subsisting agreement, settlement or award.

(2) To coerce workers in the exercise of their right to self-organisation or to join unions or refrain from joining any union, that is to say:

(a) for a union or its members to picket in such a manner that non-striking workers are physically debarred from entering the work place;

(b) to indulge in acts of force or violence or to hold out threats of intimidation, in connection with a strike against non-striking workers or against managerial staff.

(3) To refuse to bargain collectively in good faith with the employer.

(4) To indulge in coercive activities against certification of a bargaining representative.

(5) To stage, encourage or instigate such forms of coercive actions as wilful 'go-slow' or squatting on the work premises after working hours or "gherao" of any of the members of the managerial staff.

(6) To stage demonstrations at the residence of the employers or the managerial staff members.

III. **General Unfair Labour Practices**

(1) To discharge or dismiss employees—

(a) by way of victimisation;

(b) not in good faith but in the colourable exercise of the employers' rights;

(c) by falsely implicating an employee in a criminal case on false evidence or on concocted evidence;

(d) for patently false reasons;

(e) on untrue or trumped up allegations of absence without leave;

(f) in utter dis-regard of the principles of natural justice in the conduct of domestic enquiry or with undue haste;

(g) for misconduct of a minor or technical character, without having any regard to nature of the particular misconduct or the past record of the service of the employees, so as to amount to shockingly disproportionate punishment;

(h) to avoid payment of statutory dues.

(2) To abolish the work being done by the employees and to give such work to contractors as a measure of breaking a strike.

(3)To transfer an employee malafide from one place to another under the guise of following management policy.

(4) To insist upon individual employees, who were on legal strike, to sign a good conduct bond as a pre-condition to allowing them to resume work.

(5) To show favouritism or partiality to one set of workers, regardless of merit.

(6) To employ employees as "badlis", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workers.

(7) To encroach upon contractual, statutory, or legal rights of the other party, by either party.

NOTE: The word "employee" used in the List No. III above does not include an employee whose duties are essentially managerial.

ANNEXURE-III

(i) The system of Wage Boards may continue as recommended by the Commission. However, Wage Boards may, in future, be constituted on a selective basis for industries of a homogeneous nature like, cement, sugar, textiles, etc., and only if there is demand from both the employers' and workers' organisations in the industry concerned and there is agreement to abide by the recommendations of the Wage Board. When a Wage Board at a central level is not feasible either because of lack of homogeneity in the industry or for lack of consent by the parties on an all-India basis, the possibility of setting up Wage Boards for such industries may be considered at the State level or if the concerned States agree, at zonal level in respect of industries in which the appropriate Government is the State Government.

(ii) The terms of reference of a Wage Board should also provide that the Board would go into the question of linking wages to productivity and payment by results and make specific recommendations therefor.

(iii) There should not be any independent members of the Wage Boards

to be set up in future. However, assessors may be associated with the Wage Boards, as recommended by the Commission, wherever necessary.

(iv) The Chairman of a Wage Board may be selected from an agreed panel of names prepared, in advance, and maintained by the Government. This panel should be drawn up with the consent of the employers' and workers representatives.

(v) The Chairman of a Wage Board need not necessarily be a person from the judiciary as suggested by the Commission's Committee; other eminent persons also, if they are found to be suitable for the post, may be considered for the purpose.

(iv) Where the Chairman is appointed with a common consent of the parties, his decisions should have the status of arbitration, as recommended by the Commission in case no decision is reached by a wage board.

(vii) No Chairman may be allowed to take up the work of more than two wage boards at a time.

(viii) Wage Boards should as far as possible, submit their recommendations within a period of one year from the date of their appointment. However, in the case of industries of a complex nature, Government may extend this time limit further.

(ix) In view of the difficulties about statutory enforcement of the recommendations of a Wage Board, the existing arrangements may continue.

(x) Government should, as a general rule, accept the unanimous recommendations of a Wage Board; but in a situation involving public interest, Government may modify these recommendations.

(xi) Wage Boards should, in their recommendations, indicate clearly the date from which their recommendations will take effect; their recommendation should normally remain in force for a period of five years.

(xii) A Central Wage Division may be set up in the Department of Labour and Employment to provide secretariat assistance to the different Wage Boards, as well as the Committees appointed under the Minimum Wages Act at the Centre. This Division should be well-equipped with staff as well as other material—both statistical and other information. The Division may draw up a Manual of Procedure for the guidance of future wage boards. Such wage cells may be set up by the State Governments also to service the wage boards/committees appointed by them.

Correspondence

Letter from S. A. Dange MP, General Secretary, AITUC to Union Minister for Labour, D. Sanjivayya

June 10, 1970

Dear Sir,

The agenda for the 29th session of the Standing Labour Committee is itemwise discussion of the recommendations of National Commission on Labour on which our organisation had already expressed its viewpoint in the last meeting of the Indian Labour Conference called specially for the purpose.

While these subjects are supposed to be under discussion in the Standing Labour Committee, the State Governments of Maharashtra and Andhra Pradesh have already introduced Labour Legislation on the basis of these very recommendations of the National Commission on Labour. The working class in both these States has opposed it. Instead of preventing these State Governments from passing these new anti-working class Bills, the Union Labour Ministry has given them support.

In previous communications, we have already pointed out that the AITUC is totally opposed to the retrograde anti-working class recommendations of the National Commission on Labour and as such we shall not be party to any tripartite discussions on them.

But as your Government is determined to go ahead with your anti-working class policy on such vital matters as Trade Union recognition, Strike-freedoms and wages, we have no alternative but to inform you that we shall not be attending the Standing Labour Committee which in effect is scheduled to discuss the N.C.L. recommendations without directly saying so.

Yours faithfully,
S. A. Dange

Letter from D. Sanjivayya, Labour Minister

July 9, 1970

Dear Shri Dange,

I did not write earlier in reply to your letter of June 10, regarding the 29th session of the Standing Labour Committee, scheduled to be held on the 23rd and 24th July next, as I was hoping it would be possible for us to meet and talk things over.

2. I am glad we were able to discuss the matter yesterday. The last ILC session, if I may say so, was concerned not so much really with formulating lines of action in regard to labour policy and legislation in the coming years, as with eliciting views from the various parties on the National Labour Commission's recommendations. The purpose of the Standing Labour Committee meeting, on the other hand, is to try and concretize thinking on the major issues involved, in an attempt, if possible to enlarge the area of agreement. The idea is to have the Committee break into two or three groups, which could discuss allied subjects on the agenda in depth and then report to the main Committee for adopting definite propositions for further action.

3. I share your feeling that on some important issues, like trade union recognition and workers' strikes, an area of difference of opinion might possibly remain even after the Standing Labour Committee has met. But it is not our intention to ignore such reservations. Formally, this would be a matter of presentation. The Committee's conclusions, even while bringing out such consensus as may emerge, can be so drawn up as to record also the divergent views expressed at the meeting. I should personally think that a minority view, if it is sound on merits, has as much claim for consideration by Government as any other. In any event, it is essential that, before Government proceed to take the action they must, they are fully equipped with all points of view.

4. We had a very useful discussion. I would reiterate that, in fairness to your own organisation as well as the process of policy formation in the field of labour—which, by good and necessary tradition, has proceeded on the basis of prior tripartite consultation—it is but right that the All India Trade Union Congress should participate in the Standing Labour Committee meeting and make its contribution to the debate. More than anything else, this will help Government to determine their stand on important questions at issue. I should also think that there is everything to be gained by your sparing some time personally to join the deliberations. The Committee can then have the advantage of getting your views first-hand, both in regard to the diagnosis of the problems at hand and the remedies you envisage. The Standing Labour Committee meeting, it seems to me, should itself provide a forum for understanding, and where possible reconciling, the divergent views.

5. May I request you once again to reconsider the matter? I hope I can count on you and the AITUC to join us at the Standing Labour Committee meeting.

With kind regards,

Yours sincrely,

D. Sanjivayya

Letter from AITUC to the Prime Minister

14 July 1970

Dear Madam,

Your Labour Ministry has called a meeting of the Tripartite Standing Labour Committee to meet at Delhi on 23 and 24 of this month.

This meeting is mainly concerned with proposals for instituting new legislation, following from some of the recommendations of the National Commission on Labour.

The proposals are of such character that they give quite a new and reactionary orientation even to the existing labour policy and laws in the matter of the rights of trade unions, strikes and such other matters. Not that the proposals are all in consonance with what the National Labour Commission has suggested. In some respects they go even beyond the position of the Commission, where the modifications suit the working of the bureaucratic State machinery and the vested interests.

We do not wish to give here our commentary on the proposals. We had an interview with the Labour Minister in which we apprised him in great detail of our position and why we thought it necessary to dis-associate ourselves from this meeting of the Tripartite Standing Labour Committee.

To be brief, the proposals legislate out of existence every union, which is not recognised, except in the matter of being on the register of the Registrar.

Similarly the right to strike and its legality or otherwise is made subject to the whims and conveniences of the employers and the Government.

History of the last thirty-two years, that is since 1938, when the Congress Party tried to impose such policy and laws on the working class in this country has shown that this policy leads to more strikes and more feuds than it settles. The policy of imposing the INTUC on the working class with the help of the State and the employers has proved a total failure. And yet the Government of India still persists in that line and now wants to give it a sanction by Central legislation, whose outline is sought to be sanctioned by this meeting of the S.L.C.

We do not know if your Government works to carry forward the same legacies in trade union and labour policy as your predecessors had. We have reasons to believe that your Government refuses to change the old line, inspite of its failure in all the public sector undertakings (viz. Bhopal, Hardwar, Durgapur, etc.) and also in the private sector (viz. Indore, Bombay Textiles, Jamshedpur, Calcutta, etc.)

Inspite of this belief of ours, we are writing to you to give your thought to this vital question of industrial relations.

Our suggestion is that your Government should first have a discussion with the trade union leadership as a whole on the questions involved

without mixing up the discussions with the employers' presence. You can discuss with them separately. The discussion should be on a high level that is with those from your Centre, including you, who make basic policies. Such discussion on vital policy matters should have preceded the calling of the Tripartite Committee. That Committee is hardly the place of proper discussions of policy between the Government and the Trade Unions.

We, therefore, request you to ask the Labour Ministry to postpone the S.L.C. meeting of 23rd July and call the T.U. Centres of all trades for a thorough round-table discussion on the matters involved.

Yours sincerely,
S. A. Dange

Reply of the Prime Minister to AITUC

July 17, 1970

Dear Shri Dange,

I received your letter yesterday. It is rather late to cancel the meeting of the Standing Labour Committee. I hope that the All India Trade Union Congress will be duly represented. However, I should like to assure you that I share some of the concerns you have expressed regarding the need for a new approach towards trade union and industrial relationships problems. There is no reason why these problems cannot be discussed a little later.

Yours sincerely,
Indira Gandhi

Letter to Labour Minister D. Sanjivayya from S. A. Dange MP, General Secretary, AITUC

11 September 1970

Dear Sir,

The AITUC had written to you on the eve of the 29th Session of the Standing Labour Committee meeting of 23rd July 1970 that as the Government of India was trying to get the sanction of the Central TU organisations to further strengthen their Labour policy in the reactionary direction, the AITUC would be no party to such a Conference. We had also requested the Prime Minister to take up this question of her Government's labour policy for reconsideration and reorientation in the progressive direction.

At that time, the HMS and the UTUC had made similar approach to you.

You suggested that we might attend the SLC and record our views there. We did not agree to that proposal.

Now we find that the HMS which attended the conference is complaining that their views have been wrongly recorded in regard to the so-called consensus and conclusions of that SLC meeting.

In view of this position, in which the AITUC, HMS and UTUC are not

party to Government of India's labour policy as expressed through its main Tripartite as well as other Committees and as the Government is showing no signs of changing its line, the AITUC is compelled to withdraw its nominees and participation from the following committees.

The Prime Minister in her letter of 17th July 197 in reply to our representation had indicated that she shared "some of the concerns you have expressed regarding the need for a new approach towards trade union and industrial relationship problems." But we do not see any possibility of her translating that concern into a positive progressive policy in the near future, if at all.

The Committees we are withdrawing from are those on

1. Automation
2. Employment
3. Implementation & Evaluation
4. Workers' Education
5. Productivity Council

The objectives of these Committees are being completely vitiated by the general approach of the Government and the employers.

For example, automation is being carried out by the employers without reference to the unions, despite the understanding on the basis of which this Committee was appointed.

The Committee on Workers' Education is more concerned in disciplining the workers in favour of the employers and making them "loyal workers" than making them into an independent, equal and self-reliant class in relation to their employers. The AITUC has all along demanded that the employers must not be allowed in a body whose primary function ought to be to eliminate the dictatorial ideology of the employers from Workers' education.

The same problems of approach and policy are involved in several other committees.

Since a fruitful dialogue is not taking place at any decisive and effective level, the AITUC considers it fruitless to join in the meaningless ritual meetings of these committees, in view of the new orientation given by the SLC and the measures proposed to be taken thereunder.

Yours faithfully,
S. A. Dange
General Secretary.

Reply from Shri Sanjivayya :

September 15, 1970

Dear Shri Dange,

Thank you very much for your letter of September 11, regarding the AITUC's participation in certain Committees.

With regards,

Yours sincerely,
D. Sanjivayya.

ii. H. M. S. to the Union Government

Letter from Mahesh Desai, General Secretary, HMS, to Prime Minister Indira Gandhi.

15 July 1970

Dear Shrimati Indira Gandhi,

We have been informed by the Union Labour Ministry that the 29th session of the Standing Labour Committee is to be held in New Delhi on 24 July 1970. Member organisations were invited to inform that Ministry about matters which should be included in its agenda. We have noted that issues suggested by us have not been included. This has always been so. Because of this attitude of the Ministry, HMS did not participate in the 26th session of the Indian Labour Conference, held in November last year. Following representation made to you on that occasion we have had correspondence with the then Labour Minister, Shri Jagjivan Ram. We had suggested and Shri Jagjivan Ram had accepted our suggestions that principal issues of trade union and industrial relations policy, in the context of fast changing national scene, should be examined by the Central Trade Union Organisations and their agreed conclusions or their respective views where they differ should be considered by the Government as a starting point of the new labour policy.

2. We had thought and we hopefully continue to think that the Government of India and you particularly had decided to reshape policies in every field with a view to accelerate growth with justice. That in doing so you were prepared to make fresh assessment of the experience of the past two decades and make basic departures from past policies and practices if they were shown to have hampered growth. We had thought that the country's labour policy would be subjected to this kind of scrutiny as has been the financial policy and the licensing policy. The need for such scrutiny is no less urgent in respect of labour policy because of its relevance to the slowing down or acceleration of industrial growth as well as growth of monopolistic dominance in the industrial sphere.

3. The National Commission on Labour was set up precisely for assessing national experience during the last twenty years. Unfortunately it failed to do the job entrusted to it. HMS said so. So did the AITUC. Although the Commission had failed to do its work the necessity of reassessment remains as great as ever and has become greater after the radical orientation given to national policies since the bank nationalisation. Both HMS and the AITUC urged the labour ministry that a review of the labour policy in the radical context was not possible on the basis of the Commission's report. Inspite of this we find that the Labour Ministry has called the Standing Labour Committee and has prepared its voluminous agenda papers by quoting extensively from the more voluminous report of the National Commission on Labour. Taking this as an affront the AITUC has informed the Labour Ministry that it is not attending the Committee's 29th Session. HMS too is extremely unhappy about

the Ministry's attitude and has grave doubts about the usefulness of this meeting and about the wisdom of using the ritual of Tripartite Consultation merely to reiterate the shibboleths of a labour policy that has failed to give the country industrial peace and worker's participation in the processes of economic growth.

4. There are even indications of retreat from past policies and of the refusal to take note of developments which are in conflict with the accepted concept of our national labour policy leading to contradictory State-wise industrial relations patterns. We are surprised that the Labour Ministry has failed to appreciate the repercussions of these developments on the economy and the deleterious consequences in industrial growth if these developments are not resolutely checked. If the Labour Ministry remains obstinate and unperceptive as it has shown itself in going ahead with the meetings of the Indian Labour Conference and the Standing Labour Committee, inspite of the misgivings conveyed to it by HMS and AITUC, we apprehend that the country will very soon have regional developments in the industrial relations field as dangerous as the chauvinistic Sena Movements and as reactionary as the communal forces. Before the Labour Ministry goes through the entirely empty and largely irrelevant exercise of tripartite consultation in the Standing Labour Committee and thereby saddles the Government of India with a formal but unavailing commitment to a labour policy opposed to growth, we request you to make an assessment of the country's unhappy industrial experience of the past.

5. We have made this request with full sense of responsibility. We assure you of our cooperation so that the assessment remains realistic and relevant to the needs of the working class movement. You will permit us to make the suggestion that the assessment should begin with your calling a representative meeting of the national trade union organisations. Thereafter the Standing Labour Committee might be called to begin the formal process of fruitful consultations on the conclusions of this assessment. Otherwise, the forthcoming session of the SLC next week will merely make a rehash of the cliches elevated to the dignity of principle by the vested interests of the labour establishment.

With regards,

Yours sincerely,
Mahesh Desai

Letter from Mahesh Desai, General Secretary, HMS, to Prime Minister Indira Gandhi.

12 October 1970

Dear Shrimati Indira Gandhi,

As desired by you we were duly represented at the 29th session of the Standing Labour Committee in Delhi in July this year. But we had our apprehensions about its outcome. What has now been sought to be passed off by the Labour Ministry as the official record of this SLC meeting has shocked us by its incredible departures from the norms of propriety and veracity.

2. According to established procedure these tripartites do not reach "conclusions" or take "decisions" except on the basis of consensus. In the absence of such consensus the record of the 26th session of the Indian Labour Conference (November 69) was called summary of discussion. The last SLC meeting could achieve even less by way of consensus. And yet the labour ministry has chosen to formalise the record as "main conclusions" in spite of our objections.

3. In our comments on the labour ministry's draft record we had stipulated our disagreement on all issues where we wanted our disagreement to be recorded. We are surprised and distressed by the ministry's cavalier attitude in not even recording our disagreement as per our letter (No. 543/70 of 14 August 1970) a copy whereof had been endorsed to your secretariat.

4. If this is the manner in which the labour ministry is going to convene tripartites and conduct their deliberations and record their proceedings HMS might be inclined like the AITUC to keep away from them altogether. HMS has already informed the ministry that it will not attend the 19th session of the central implementation and evaluation committee in November 1970. Likewise we see no reason for calling the plenary session of the Indian Labour Conference in February 1971 when the AITUC is reluctant and HMS has been put off by the incorrect record of the last SLC meeting.

5. We are amazed by the persistence of the labour ministry in not attuning its thinking to the new mood and momentum that you are trying to create in the country. Its ossified attitudes and postures have hamstrung production in key industries. Its latest exercise in relation to ILO Maritime Conference, manifestly at variance with the advice of the transport ministry, has immobilised over a score of ships in Bombay and may immobilise the entire water front at our major ports. We are pained and surprised by the labour ministry's penchant for putting hindrances in the path of the workers' willingness to contribute to and benefit from the new impetus that you have given to the country's economy and policy.

With regards,

Sincerely,
Mahesh Desai

Letter from Mahesh Desai, General Secretary, HMS, to Secretary, Government of India, Ministry of Labour and Employment

13 October 1970

Sir,

Sub: 27th session of the Indian Labour Conference—
New Delhi—February 1971—agenda of the

This will acknowledge the receipt of your letter No. LC-9(13)/70 dated 16 September 1970 on the above subject.

In the light of the manner in which the government of India in the ministry of labour has convened the 26th session of the Indian Labour

Conference and the 29th session of the Standing Labour Committee, has conducted their deliberations and has recorded their proceedings the Hind Mazdoor Sabha feels that the following points need to be considered **de novo:**

1. The composition of the Indian Labour Conference and its associated Standing Labour Committee;
2. The basis of determining the representation of the workers and the employers groups vis-a-vis the government group;
3. The basis of assigning the number of delegates to the central trade union organisations in the workers group;
4. The determination of the periodicity of the ILC and the SLC;
5. The manner of preparing the agenda for the ILC and the SLC;
6. The manner of taking decisions in the ILC and the SLC and the method of recording these decisions; and
7. Removal of the codes from the purview of labour policy and its administration and the abolition of the central implementation and evaluation committee.

Faithfully,
Mahesh Desai

Letter from Mahesh Desai, General Secretary, HMS, to the Secretary, Government of India, Ministry of Labour and Employment

13 October 1970

Sir,

This will acknowledge the receipt of your circular letter No. RD 173 (23)/70 dated 30 September 1970 alongwith a copy of the "finalised version of the main conclusions of the 29th session of the Standing Labour Committee held at New Delhi on 23 and 24 July 1970 for information and appropriate action". We propose to take no action on this because no action is called for. However, we reiterate what we had communicated to you vide our letter No. 543/70 of 14 August 1970. We once again would like to record that the 29th session of the SLC had reached no conclusions and was in no position to reach any conclusions. Secondly that the earlier draft and the finalised version circulated do not correctly record the position and point of view of the Hind Mazdoor Sabha. This record prepared without our consent and concurrence is not acceptable to us and we do not consider ourselves bound by it.

Faithfully,
Mahesh Desai

Resolutions passed at the meeting of the General Council, AITUC, New Delhi 24-25 November 1970

ON THE ANTI-LABOUR POLICY OF THE GOVERNMENT OF INDIA

FOR some time past the labour policy of the Government of India has been moving in a most reactionary direction. This fact is evidenced by many concrete measures among the most recent of which are the Essential Services Maintenance Ordinance now enacted as a statute, the Central Industrial Security Force Act, the proposal to set up IRCs along with extension of restriction on strikes, the application and content of so-called unfair labour practices by the unions, etc, most of which are based on the reactionary anti-workingclass recommendations of the National Commission on Labour. Many more instances can be cited.

All these statutes and proposals have been rejected and resisted by all the TU centres except the INTUC. But the very fact that the Government is going ahead with these clearly shows that while forced to give concessions on wages and other matters, with the intent to bring industrial peace, the bourgeoisie and its Government are determined to outlaw all strikes, to enforce compulsory adjudication, to foist unions of their choice as representative unions.

The AITUC has come out sharply against these measures and proposals and has been warning the working class that they must unite and beat back this offensive of the bourgeoisie on its most cherished TU rights.

To-day the urgency has increased due to the so-called "consensus" evolved at the 29th session of the SLC held on 23-24 July 1970. Though the AITUC had boycotted the session, and though the HMS has denounced as untrue most of the conclusions termed as unanimous by the Government, the Government is going ahead on the basis of the fake consensus which is only a consensus between the Government, the employers and the INTUC.

The AITUC calls upon the workers of whatever affiliation they may be to unite and resist these attacks on their fundamental TU rights. All unions affiliated to the AITUC must immediately campaign amongst the widest sections of the working class to rouse their consciousness and take concrete steps to draw in all unions of whatever affiliation to ensure the widest mobilisation and unity.

While carrying on a consistent and continued campaign, the AITUC directs all its unions to observe a 'Trade Unions Rights Week' from 4-11 January 1971 through gate meetings, demonstrations, rallies and processions.

The AITUC had suggested to the Prime Minister of India before the session of the ILC that a top-level meeting of leaders of national TU

organisations should be held to discuss these matters. While the Prime Minister had at that time agreed for the need for such a discussion, nothing has been done in this regard. The AITUC publicly renews its demand to the Prime Minister of India to call such a meeting to discuss the entire question of the labour and industrial relations policy.

It directs all its unions to forward resolutions demanding such a meeting passed during the Trade Union Rights Week to the Prime Minister.

ON RECOGNITION OF TRADE UNIONS

THE problem of recognition of trade unions has become the central problem of industrial relations and of relationship between the various trade unions. At present there is no central legislation on this. In Maharashtra, Gujarat and Madhya Pradesh, state acts have been legislated which base recognition on verification of membership rolls by government officials. The whole machinery has been consciously worked in a way by which all except INTUC unions—even when they have no following—have been denied recognition and the INTUC foisted on the workers as their representative organisation. Recognition under the code of discipline, although it has no legislative sanction, is also based on governmental verification of membership rolls and has led by and large to the same results. The National Commission on Labour discussed this problem and proposed that recognition should be left to be decided from case to case by the IRCs which could choose the method of verification or ballot as they liked.

The AITUC has always stood for ballot as the only principled and democratic method for determining the representative character of a union. It has always been against appointing any governmental authority for determining the representative status of a union.

The UF governments of Kerala and West Bengal brought legislations which based themselves on ballot of the workers. But the congress government at the centre refused to accord its assent to these measures. But various state governments such as Andhra Pradesh and Bihar are going ahead with legislations which will impose verification as the method of determining recognition. The Government of India which refused assent to the Kerala and Bengal legislations has allowed these Governments to go ahead.

At the last meeting of the SLC the Government of India again brought up the question of recognition. The AITUC had boycotted the meeting as a protest against the Government of India's insistence on going ahead with the reactionary proposals of the NCL on this and other issues, and in fact giving proposals which are even more anti-working class than the proposals of the NCL and which had been opposed not only by the AITUC but also by the HMS. On the question of recognition the SLC came to the conclusion that while recognition should be made statutory the procedure should be left to be decided by the Chairman of the IRC, in his sole discretion. The INTUC insisted that the Chairman should be bound

down to decide the issue through verification and though the HMS did not agree with this, the Government of India circulated this proposal as a unanimous conclusion of the SLC.

It is therefore absolutely clear that the Government of India and various state governments are determined to go ahead with their proposal to force verification of membership rolls as the method for choosing the representative union, which in fact means making the INTUC unions recognised unions whatever their real status may be among the workers.

The AITUC can never accept this and is determined to resist this nefarious proposal with all its might.

The government and the employers should know that imposing a union on the workers by a legal and administrative trick can never solve problems and will in fact worsen industrial relations.

Having considered the problem from all aspects, the AITUC once again reiterates that it stands for secret ballot by the workers as the only democratic method of resolving the issue.

In actual fact wherever a number of unions exist, the very force of circumstances make it imperative for the employer to negotiate and settle with all the unions.

Hence a democratic and realistic solution of the problem has to be found. The proposals of the SLC are no solution and any recognition to a union based on verification will only worsen industrial relations.

The AITUC has decided to launch a campaign for a top level meeting of representatives of all TU centres to be convened by the Prime Minister to discuss the entire labour and industrial relations policy of the Government of India. Recognition will be one of the most important issues at such a conference.

The General council of the AITUC considers it necessary that the present impasse on this vital issue should be broken and the attempts by various State Governments and the Government of India to impose recognition through verification must be defeated.

However the AITUC must take into account the wide divergences of opinions and conditions which exist today.

Keeping all these circumstances in view the General Council authorises the Secretariat of the AITUC to discuss the issue with other TU centres, whether in a conference called by the Prime Minister or otherwise, with a view to find a solution consistent with the best interests, of the working-class and the TU movement.